

EPC COMMISSION MINUTES & AGENDA

MONTH September

YEAR 1987

ADM-1-1
Sept. 1987

INDEX
ENVIRONMENTAL PROTECTION COMMISSION
Meeting at Wallace State Office Building
Des Moines, Iowa
September 21-22, 1987

| | <u>Page</u> |
|--|-------------|
| MEMBERS PRESENT | 1 |
| MEMBERS ABSENT | 1 |
| ADOPTION OF AGENDA | 1 |
| ADOPTION OF MINUTES | 1 |
| DIRECTOR'S REPORT | 1 |
| GROUNDWATER BUDGET, FY88, FY89 AND FY90 | 1 |
| MONTHLY REPORTS | 2 |
| LITIGATION UPDATE | 10 |
| UNDERGROUND STORAGE TANK TASK FORCE | 10 |
| REFERRALS TO THE ATTORNEY GENERAL | 11 |
| APPOINTMENT -- CITY OF GARNER | 12 |
| APPOINTMENT -- RODNEY VIEGER | 13 |
| PROPOSED LEGISLATION | 14 |
| RECESS | 14 |
| MEETING RECONVENES -- 8:30 A.M., SEPTEMBER 22 | 14 |
| REFERRALS TO THE ATTORNEY GENERAL -- CONTINUED | 14 |
| EMERGENCY ADOPTION -- AMENDMENTS TO CHAPTER 20.2, AIR QUALITY RULES | 15 |
| AMENDMENTS TO NEW SOURCE PERFORMANCE STANDARDS AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS | 16 |
| NOTICE OF INTENDED ACTION -- CHAPTER 100, "SCOPE OF TITLE- DEFINITIONS-FORMS-RULES OF PRACTICE," AND CHAPTER 102, "PERMITS" | 22 |
| REVISIONS TO CHAPTERS 50, 51 AND 52--WATER RIGHTS ALLOCATION RULES | 21 |
| EMERGENCY ADOPTION--AMENDMENTS TO CHAPTER 135, UNDERGROUND STORAGE TANKS | 34 |
| RULE DECISION -- SUBRULE 567--41.4(3)"f"(5) | 36 |

| | <u>Page</u> |
|--|-------------|
| PROPOSED CONTESTED CASE DECISION--CITY OF LONG GROVE | 37 |
| MEETING REPORT ON "THE ROLE OF HAZARDOUS WASTE CLEANUP IN PROTECTING HUMAN HEALTH | 40 |
| ADDRESS ITEMS FOR NEXT MEETING | 41 |
| PUBLIC PARTICIPATION | 41 |
| NEXT MEETING DATES | 41 |
| ADJOURNMENT | 41 |

MINUTES
ENVIRONMENTAL PROTECTION COMMISSION
Wallace State Office Building
Fourth Floor Conference Room
Des Moines, Iowa
September 21-22, 1987

MEMBERS PRESENT

Charlotte Mohr, Nancy Lee Siebenmann, Richard Timmerman, Donna Hammitt,
Gary Priebe, Keith Uhl, Robert Schlutz.

MEMBERS ABSENT

Catherine Dunn, Clark Yeager, Richard Timmerman (September 22).

ADOPTION OF AGENDA

The following additions were made to the agenda:

1. Contract Approval -- Vogel Paint
2. Rule Decision -- Subrule 567--41.4(3)"f"(5), Water Supply Rules
3. Proposed Contested Case Decision -- City of Long Grove

Motion was made by Charlotte Mohr to approve the agenda as amended. Seconded by Richard Timmerman. Motion carried unanimously.

ADOPTION OF MINUTES

Motion was made by Richard Timmerman to approve the minutes of July 20-21, 1987 and August 19-20, 1987. Seconded by Gary Priebe. Motion carried unanimously.

DIRECTOR'S REPORT

Director Larry Wilson reported that interviews have been held to fill the position of Division Administrator for the Waste Management Authority Division. Applications were received from over twenty people and seven of them were interviewed. The final three will be reviewed tomorrow and a selection will be made from those three. Additional staffing for that division will take place in the near future.

The early September meeting of the Low Level Radioactive Waste Compact Commission was canceled and has been rescheduled for September 30 in Detroit.

*Retirement
notice* Director Wilson reported that his secretary, Frances Brady, has submitted her resignation to take effect November 19 and that position will also have to be filled. He added that Frances has worked for the Department for 37 years.

GROUNDWATER BUDGET, FY88, FY89 AND FY90

Stan Kuhn, Division Administrator, Administrative Services Division, presented the following item.

Attached is an outline of the groundwater bill budget. H.F. 631 sets up a separate groundwater fund. Within this fund are five accounts: (1) oil overcharge account, (2) agricultural management account, (3) solid waste account, (4) storage tank management account, and (5) the household hazardous waste account. The receipts to each account and the expenditures from each account are shown as mandated by H.F. 631.

Many of the receipt estimates are based on limited data, and it may be necessary to make significant changes as we receive better information. The expenditures are outlined as mandated in the bill. For the most part, the DNR has little discretion among the various expenditure purposes appropriated in each account.

The staff estimates that it will be necessary to add approximately 56 positions during FY88 and an additional ten positions in FY89 to implement the provisions of the groundwater protection bill. Most of these positions will be added to the Environmental Protection Division and the Geological Survey Bureau. Other positions will be added to the Coordination and Information Division and to the Administrative Services Division.

Mr. Kuhn stated that a separate fund, which is not part of the general fund, was set up for the groundwater budget. The money does not revert at the end of the fiscal year but carries forward, for the same purpose, for the following fiscal year.

Discussion followed regarding pesticide sales fees, grants to counties for testing private wells, and administration of funds. It was noted that agricultural drainage wells must be registered by January 1, 1988, to qualify for cost-sharing in closing a well.

Gary Priebe requested that the Department's news release be sent to each county extension office as this is a good source of news for most rural families. Donna Hammitt asked that the Farm Bureau Spokesman also be sent the news release.

MONTHLY REPORTS

The following monthly reports are enclosed with the agenda for the Commission's information.

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Enforcement Status Report
5. Contested Case Status Report

Members of the department will be present to expand upon these reports and answer questions.

DEPT. OF PUBLIC UTILITIES
ENVIRONMENTAL PROTECTION DIVISION
PUBLISHED STATUS REPORT
SEPTEMBER 1, 1987

| PROPOSAL | DRAFT TO CONSTRUCTION | NOTICE PUBLISHED | PAID REVIEW COMMITTEE | HEARINGS | SUMMARY OF COMMENTS & RECOMMENDATIONS TO CONSTRUCTION | PAID ADOPTED | PAID PUBLISHED | PAID EFFECTIVE |
|--|--------------------------|---------------------|-----------------------------|----------------------------------|---|-----------------|-------------------|--------------------|
| 1. Ch. 80 - Salmon Standard | 9/22/87 | --- | --- | --- | 9/22/87 | 9/22/87 | 10/21/87 | 9/22/87 |
| 2. Ch. 23 - SSE | 5/28/87 | 6/17/87 | 7/28/87 | 7/27/87 7/28/87 7/29/87 | 8/28/87 | 8/28/87 | 9/29/87 | 10/14/87 |
| 3. Ch. 23 - NEWS & NEWSAPS | 9/22/87 | 10/21/87 | --- | 11/18/87 | --- | --- | --- | --- |
| 4. Chs. 40, 41 - Fluoride MCL | 5/28/87 | 6/17/87 | 7/28/87 | 7/27/87 7/28/87 7/29/87 | 8/28/87 | 8/28/87 | 9/29/87 | 10/14/87 |
| 5. Chs. 80, 81 - Ap. Backlogs Nalls | 9/22/87 | --- | --- | --- | 9/22/87 | 9/22/87 | 10/21/87 | 9/22/87 |
| 6. Chs. 80 - 82 Water Allocation (Conservation) | 5/28/87 | 6/17/87 | 7/28/87 | 7/27/87 7/28/87 7/29/87 | 9/22/87 | 9/22/87 | 10/21/87 | 11/22/87 |
| 7. Chs. 100, 102 - Liquids in Landfills | 9/22/87 | --- | --- | --- | --- | --- | --- | --- |
| 8. Chs. 100, 102 - Landfill Ground Water Monitoring | 5/16/87 | 5/28/87 | 6/18/87 | 6/29/87 6/30/87 6/31/87 | --- | --- | --- | --- |
| 9. Ch. 125 - Underground Tank Monitoring | 12/15/86 | 1/14/87 | 2/18/87 6/18/87 | 2/23/87 2/28/87 2/29/87 | 4/21/87 | 4/21/87 | 5/28/87 | Delayed 9/22/87 |
| 10. Ch. 125 - Tank Registration | 9/22/87 | --- | --- | --- | 9/22/87 | 9/22/87 | 10/21/87 | 9/22/87 |
| 11. Ch. 125 - Sniffer Well Criteria | 9/22/87 | --- | --- | --- | --- | --- | --- | --- |
| 12. Ch. 145 - Used Oil | 6/17/87 | 8/12/87 | --- | 9/28/87 9/29/87 9/30/87 | --- | --- | --- | --- |
| 13. Ch. 152 - Criteria for Siting Low-Level Radioactive Waste Facilities | 8/19/87 | 9/29/87 | --- | 10/21/87 10/22/87 10/23/87 | --- | --- | --- | --- |

*Projected

MONTHLY VARIANCE REPORT

08/31/87

| No. Facility | Program | Engineer | Subject | Decision | Date |
|--------------------------|---------------------|-----------------------|-----------------------|----------|----------|
| 1 Ottawa, City of-AirCan | Air Quality | --- | Structures | denied | 08/31/87 |
| 2 Albia, City of | Wastewater Const. | Burke & Associates | Minimum Sewer Size | approved | 08/03/87 |
| 3 Clarinda, City of | Wastewater Const. | Midland Engineering | Sewer Grade | approved | 08/05/87 |
| 4 Washington, City of | Wastewater Const. | City Engr. Washington | Walt Bypassing | approved | 08/14/87 |
| 5 Van Bunt Sup-Mob. City | Wastewater Const. | Clapondie-Barber | Embarkments and Dikes | approved | 08/26/87 |
| 6 Rock Valley, City of | Water supply Const. | Man. Engineering | Siting Criteria | denied | 08/21/87 |

INCIDENTS OF HAZARDOUS CONDITIONS

During the period of August 1, 1967 through August 31, 1967, reports of 65 hazardous conditions were forwarded to the Central Office. Two incidents are highlighted, followed by a general summary and the number per field office.

| Date Reported and County | Description: Material, Amount, Date of Incident, Cause, Location, Report | Responsible Party | Response and Corrective Action |
|--------------------------|--|--|--|
| 8/07/67 SWIFT | Pneul oil was being loaded in two tanks when an employee forgot to turn off a transfer pump. About 375 gallons of product overflowed through the vent pipes of the cooling tower and spilled on the ground at 1227 East Buchanan Street in Newport, Iowa on August 7, 1967. | St. Luke's Hospital 1227 E. Buchanan St. Newport, IA 52855 | Contaminated soil was excavated, applied oil used at a thickness no greater than four inches, and directed to provide for sorption. The excavated area was backfilled with clean sand and rock. High level alarms are being installed to prevent future incidents. |
| 8/28/67 | A one-quarter-inch pipe on a water separator container was placed into the side outlet of a two-inch drain pipe "T" fitting and the valve on the return line to the tank from the separator was closed. This caused the level of 1,1,1 trichloroethane in the separator to reach the overflow pipe level, and about 100 gallons ran into the drain line and steam cover at 601 East Central in Jefferson, Iowa on July 29, 1967. | White Consolidated Industries, Inc., 601 East Central, Jefferson, IA 50129 | The valve to the return line was placed in an open position and secured. The side outlet of the two-inch "T" fitting was permanently plugged and the one-quarter-inch line was rerouted to the catch pan directly below the separator. |

Numbers in Parentheses Represent Reports for the Same Period in Fiscal Year 1966

| Month | Substance Type | | | | | Mode | | | | |
|-------|----------------------|-------------------|----------------|--------------------------------|----------------------|----------|------------------|-------------|------|-------|
| | Total # of Incidents | Petroleum Product | Agri. Chemical | Other Chemicals and Substances | Handling and Storage | Pipeline | Highway Incident | RR Incident | Fire | Other |
| Oct | 79 | 45 | 0 | 34 | 53 | 0 | 18 | 2 | 0 | 6 |
| Nov | 24 | 12 | 3 | 9 | 17 | 0 | 5 | 1 | 0 | 1 |
| Dec | 43 | 36 | 1 | 6 | 24 | 1 | 14 | 1 | 0 | 3 |
| Jan | 48 | 32 | 3 | 13 | 37 | 0 | 9 | 0 | 1 | 1 |
| Feb | 41 | 25 | 1 | 15 | 30 | 1 | 5 | 1 | 2 | 2 |
| Mar | 55 | 35 | 5 | 15 | 37 | 0 | 12 | 4 | 1 | 1 |
| Apr | 76 | 32 | 25 | 21 | 51 | 3 | 16 | 3 | 2 | 3 |
| May | 74 | 24 | 29 | 21 | 39 | 0 | 24 | 2 | 6 | 3 |
| Jun | 73 | 34 | 11 | 28 | 47 | 1 | 14 | 1 | 2 | 8 |
| Jul | 74 | 26 | 10 | 38 | 50 | 1 | 13 | 3 | 1 | 6 |
| Aug | 65(34) | 50(20) UNT-18 | 5(1) | 30(13) UNT-1 | 49(25) UNT-19 | 0(0) | 9(2) | 1(3) | 1(0) | 5(4) |

Total # of Incidents Per Field Office This Period

| | | | | | |
|----|----|----|----|----|----|
| 01 | 02 | 03 | 04 | 05 | 06 |
| 7 | 6 | 4 | 11 | 21 | 16 |

Enforcement Report Update

- 5 -

The following new enforcement actions were taken last month:

| Name, Location and Field Office Number | Program | Alleged Violation | Action | Date |
|---|----------------|---|---------------|---------|
| City of Wapello (4) | Wastewater | Municipal improvement plan | Order/Penalty | 7/30/87 |
| City of Wapelli (3) | Wastewater | Municipal improvement plan | Order/Penalty | 7/30/87 |
| City of Elkhart (5) | Wastewater | Effluent discharge | Order/Penalty | 8/11/87 |
| City of Callender (2) | Wastewater | Bypassing | Order/Penalty | 8/11/87 |
| City of Iowa City (6) | Wastewater | Municipal improvement plan | Order/ | 8/11/87 |
| City of Mt. Vernon (1) | Wastewater | Monitoring & reporting Treatment violations | Order/Penalty | 8/11/87 |
| Timberline Assoc. Ltd. Partnership W. Burlington (6) | Drinking Water | Radioactivity MCL | Order/Penalty | 8/24/87 |
| Twelve Mile House Bernard (1) | Drinking Water | Failure to monitor bacteria and nitrate | Order/Penalty | 8/24/87 |
| Accent Lawn and Leisure Mt. Joy (6) | Air Quality | Open burning | Order/Penalty | 8/28/87 |
| Gradert, Ernest and Kevin Sibley (3) | Air Quality | Open burning | Order/Penalty | 8/28/87 |
| Ottumwa-Wapello County SLF (6) | Solid Waste | Permit violations | Order/Penalty | 8/31/87 |

Summary of Administrative Penalties

The following administrative penalties are due:

| NAME/LOCATION | AMOUNT | DUE DATE |
|--|---------|----------|
| *Shelter Shield (Buffalo Center) | \$1,000 | 12-03-86 |
| *Lawrence Payne (Ottumwa) | 700 | 12-03-86 |
| *Cedar Hills Apartments (Dubuque) | 1,000 | 12-29-86 |
| *Chico's Supper Club (Burr Oak) | 863 | 2-10-87 |
| *City of Dysart | 400 | 3-13-87 |
| *OK Lounge (Marion) | 448 | 3-29-87 |
| *Rhinehart Construction Co. (W. Dallas SLF) | 800 | 5-15-87 |
| Giese Construction Co. (Eagle Grove) | 1,000 | 5-25-87 |
| City of Swan | 530 | 7-01-87 |
| Elings/Catron/Frey (Des Moines) | 1,000 | 7-18-87 |
| Country Corner Cafe (Pacific Junction) | 451 | 8-05-87 |
| JTM Indust./MacDade/Legner (Pleasant Valley) | 1,000 | 8-12-87 |
| Glen Mark Subdivision (Burlington) | 436 | 8-19-87 |
| Wilson/Pingel (Fort Dodge) | 500 | 8-19-87 |
| The Moore Oil Co. (West Branch) | 50 | 8-24-87 |
| Orrie's Supper Club (Hudson) | 100 | 8-31-87 |
| *K & K Truckstop (Lenox) | 112 | 9-01-87 |
| *Ken Turner (Fort Madison) | 150 | 9-15-87 |
| City of Iraton | 500 | 9-06-87 |
| Mt. Vernon Steel and Wire | 1,000 | 9-12-87 |
| Big Rock Top | 660 | 9-21-87 |
| Bramer Utilities | 262 | 9-21-87 |
| City of Dixon | 200 | 9-27-87 |
| Linwood Mining (Davenport) | 1,000 | 9-27-87 |
| City of Elkhart | 1,000 | 10-10-87 |
| City of Mt. Vernon | 1,000 | 10-12-87 |
| Timberline Assoc. Ltd (W. Burlington) | 1,000 | ---- |
| Twelve Mile House (Bernard) | 339 | ---- |
| Accent Lawn and Leisure (Mt. Joy) | 1,000 | ---- |
| Gradert, Ernest and Kevin (Sibley) | 500 | ---- |
| Ottumwa-Wapello County SLF | 1,000 | ---- |

Page 2

The following administrative penalties have been appealed:

| <u>NAME/LOCATION</u> | <u>AMOUNT</u> |
|--|---------------|
| Kula and Boge (Martelle) | \$1,000 |
| Mandi-Klasp, Inc. (Webster City) | 1,000 |
| Mann and Traus (Davenport) | 100 |
| Scotty's Auction Service (Davenport) | 100 |
| Des Moines Metro SLV | 1,000 |
| Iowa City Agency SHF | 1,000 |
| Bianchi Mayrat Lagoon (Des Moines) | 600 |
| Thomas E. Lennen (Barnum) | 700 |
| Trausch Co., Inc. (Carroll) | 1,000 |
| Trausch Co., Inc. (Carroll) | 1,000 |
| The Bank (Turin) | 212 |
| McFedries (Davenport) | 1,000 |
| City of Inwood | 400 |
| Clarion Farmers' Coop | 750 |
| Great Rivers Coop (Atavia) | 1,000 |
| Poweshiek Rural Water | 500 |
| Rich Metals (Davenport) | 1,000 |
| Village Oaks Homeowners Ass'n (Blue Grass) | 424 |
| City of Wapello | 500 |
| City of Newell | 500 |

The following administrative penalties were paid in August:

| <u>NAME/LOCATION</u> | <u>AMOUNT</u> |
|--|---------------|
| **K & K Trucking (Lenox) | \$ 50 |
| Frederika Tap (Frederika) | 50 |
| City of Shenandoah | 500 |
| Golden Slipper (Dunlap) | 250 |
| City of Toledo | 250 |
| Osage River City Egg (Mason City) | 500 |
| Lloyd Matthews (Allamakee Co.) | 500 |
| New Hampton Farmers Coop | 1,000 |
| Kountry Manor (Carnaville) | 312 |
| Squaw Valley Sub. (Ames) | 212 |
| Trausch Co., Inc. (Carroll) | 215 |
| Cattleman's Steak & Provisions (Belmond) | 50 |
| River Road Golf Club (Algona) | 274 |
| **Ken Turner | 50 |
| City of Callender | 600 |

Penalties were rescinded for Larsen/O'Donnell (Humboldt) and The Bank (Turin).

* Referred to the Attorney General
 ** On Payment Schedule

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ANNUAL COMPLAINT SUMMARY
SEPTEMBER 1, 1969

| Name, Location and Region Number | New or Updated | Program | Alleged Violation | NRC Action | Status | Date |
|--|----------------|-------------------------|---|---------------------------------|--|--|
| Adams Corporation Council Bluffs (4) | | Wastewater Biosolids | Release of Hazardous Substances | Referred to Attorney General | Referred NPA suit filed State Intervention | 12/20/68 2/20/69 3/20/69 |
| Boyer Valley Company Pawnee (4) | | Wastewater | Prohibited Discharge | Referred to Attorney General | Referred Consent Decree Enforcement | 10/20/68 12/20/68 1/20/69 |
| Booth and Hall, Inc. Barnhart (6) | | Solid Waste | Open Burning | Order | Referred Suit Filed Default Judgment \$7500 | 1/20/69 4/20/69 6/20/69 |
| Bryant, Robert E. Chariton (3) | | Wastewater | Prohibited Discharge | Order | Referred Suit Filed Enforcement Litigation | 6/20/68 9/20/68 |
| Cedar Hills Apts. Dubuque (1) | | Water Supply | Monitoring; Operating without permit | Order/Fine | Referred Suit Filed | 2/20/69 4/20/69 |
| Chen's Super Club St. Charles (6) | | Water Supply | Monitoring; Operating without permit | Order/Fine | Referred Suit Filed | 2/20/69 4/20/69 |
| City of (5) | | Wastewater | Compliance Schedule | Order/Fine | Referred | 5/20/69 |
| Ellers, Dwayne Interior (1) | | Flood Plain | Unauthorized Fill | Referred to Attorney General | Referred Suit Filed Default Judgment | 6/20/68 11/20/68 1/20/69 |
| Flynn, Robert Keosauqua (6) | | Flood Plain | Channel Change | Order | Referred | 5/20/69 |
| Hickory Grove Mill Jesse (5) | | Drinking Water | Failure to Monitor | Order | Referred Enforcement Case | 5/20/69 |
| Ill. Sup Food Trade, Inc. Dubuque County (4) | | Wastewater | Prohibit Liquor Discharge | Order | Referred Suit Filed | 9/20/68 1/20/69 |
| Jettie Building Service Clinton (6) | Updated | Solid Waste | Unauthorized Operation | Order | Referred Suit Filed Consent Decree \$5000 | 6/20/68 6/20/68 8/20/68 |
| Jumping Falls, Inc. Dubuque County (2) | | Wastewater | Prohibited Discharge | Order | Referred Suit Filed | 7/20/68 1/20/69 |
| Johnson, City of (5) | Updated | Wastewater | Compliance Schedule | Order/Fine | Referred Consent Decree | 5/20/69 8/20/69 |
| Kline, James & John New | New | Flood Plain | Channel Change | Order | Referred | 8/20/69 |
| OK Lounge Marion (1) | Updated | Drinking Water | Failure to Monitor | Order | Referred Suit Filed | 6/20/69 7/20/69 |
| Outside Inn St. Charles (6) | Updated | Drinking Water | Failure to Monitor | Order | Referred Consent Decree \$500 | 5/20/69 7/20/69 |
| Farber, A.J. Muscatine (4) | | Solid Waste | Operation Violations at Permitted Site | Order | Referred Injunction Issued Compliance Order | 2/20/69 2/20/69 3/20/69 |
| Fayus, Lawrence Clinton (6) | Updated | Solid Waste | Open Burning | Order/Fine | Referred Suit Filed Consent Decree Petition Filed | 2/20/69 4/20/69 8/20/69 3/20/69 |
| Foster Dairy Oil Company Barnhart (6) | | Wastewater | Prohibited Discharge | Referred to Attorney General | Referred Consent Decree Consent Decree Approved | 10/20/68 10/20/68 1/20/69 |
| Fugentiller, William et.al. Washington County (6) | Updated | Flood Plain | Channel Change | Referred to Attorney General | Referred Suit Filed | 3/20/69 6/20/69 |
| Hickert Construction Co. Dallas County (5) | New | Solid Waste | Family Hazardous | Order | Referred | 8/20/69 |

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION
ATTORNEY GENERAL REFERRALS
SEPTEMBER 1, 1987

| Name, Location and Region Number | New or Updated | Program | Alleged Violation | DNR Action | Status | Date |
|--|----------------|-------------------|--|--|--|--|
| Walshbury, Donald, Procto-X San Joaquin (5) | | Resource Waste | Treatment and Storage Violations | Referred to Attorney General | Referred Judgment Appealed to Sup. Court Briefs Filed | 9/18/86 1/86 7/86 10/86 |
| Shelter Shield Buffalo Center (6) | | Air Quality | Excess Emissions; Construction w/o permit Order/Fine/ty | | Referred Suit Filed | 1/28/87 6/28/87 |
| Wisconsin Large Service Clinton (6) | | Wastewater | Prohibited Discharge | Referred to Attorney General | Referred Suit Filed | 11/20/85 7/86 |
| Wallace, Robert C. Beane Vista and Cherokee Counties (3) | Updated | Wastewater | Prohibited Discharge | Order | Referred Hearing Consent Decree Contempt Finding Contempt Finding Contempt Finding | 11/27/85 4/28/86 4/28/86 7/28/86 9/28/86 9/28/86 |
| Woodland Park Jones County (1) | | Wastewater | Prohibited Discharge | Order | Referred Suit Filed Temporary Injunction | 7/28/85 11/19/85 2/12/86 |
| Woodside Mobile Home Estates Hart Pleasant (6) | | Drinking water | Failure to Monitor | Order | Referred Suit Filed | 5/22/85 7/28/85 |
| Wynn, Max Johnson (6) | Updated | Flood Plain | Prohibited Construction | Defending Referred to Attorney General | Suit Filed Motion to Dismiss Denied Referred Counter Claim Filed Trial Held Judgment for Plaintiff | 12/10/84 3/26/85 6/27/85 7/12/85 10/85 4/16/86 6/28/86 |

DEPARTMENT OF REVENUE, IRELAND
ENVIRONMENTAL PROTECTION DIVISION
CHIEF OFFICE
SEPTEMBER, 1987

| DATE RECEIVED | NAMES OF CASE | ACTION APPLIED | PROGRAM | ASSIGNED TO | STATUS |
|--------------------|--------------------------------------|----------------------|-------------|-------------|---|
| 9-24-86 | Salmon, et. al. | Administrative Order | NE | Lands | Appeal withdrawn 9-21-87. |
| 10-17-86 | City of Navington | Administrative Order | NE | Nansen | Hearing continued. |
| 1-23-86 | Galena Soil Service | Administrative Order | NE | Lands | Hearing continued; cleanup study progressing. |
| 6-12-86 | AMM - Clinton | Administrative Order | Air | Lands | Hearing continued. |
| 9-10-86 | Edin and Sage | Administrative Order | NE | Lands | Negotiating before filing. Removal started. |
| 10-27-86 | Union County/Wit/beam | Permit Issuance | FP | Clark | Remanded by District Court. |
| 11-22-86 | Leland Municipal Utilities | Administrative Order | NE | Nansen | Settled. |
| 12-22-86 | Wood-Clay Company, Inc. | Administrative Order | AD/NE/NE | Lands | Motion to schedule hearing, 1-24-87. |
| 11-14-86 | Gale Conrad | Permit Condition | FP | Clark | Proposed decision 6-18-87. |
| 12-22-86 | City of Nodan | Administrative Order | NE | Nansen | Hearing continued. |
| 12-11-86 | Elaine Reese | Permit Condition | FP | Clark | Hearing set for 11-17-87. |
| 12-24-86 | Yumoris Nemberlin | Administrative Order | FP | Clark | Hearing continued. |
| 1- -87 | Aspro, Inc. | Administrative Order | AD | Lands | Settled. |
| 1-14-87 | Boore and Company | Administrative Order | NE | Murphy | Settled. |
| 1-18-87 | Grainer | Administrative Order | FP | Clark | Hearing held 6-30-87. |
| 1-19-87 | City of Mt. Pleasant | Administrative Order | NE | Nansen | Settled. |
| 1-22-87 | City of Long Grove | Design Denial | NE | Nansen | Hearing held 7-15-87. |
| 1-22-87 | Town and Moon | Administrative Order | NE | Kennedy | Negotiating before filing. |
| 4-24-87 7-14-87 | Scotty's Auction Service | Administrative Order | NE AD | Kennedy | New case. |
| 5-22-87 | Don Meines Metro SLF | Administrative Order | NE | Kennedy | Proposed decision 8-8-87; EPC review. |
| 5-12-87 | Low City Registry NW | Administrative Order | NE | Nansen | Hearing set for 9-17-87; processing 9-8-87. |
| 5-22-87 | Shenck-Wapner Lagers (Nash Smith) | Administrative Order | NE | Kennedy | Hearing set for 11-4-87. |
| 6-23-87 7-22-87 | Tennant Company, Inc. | Administrative Order | AD/NE NE | Lands | AD settlement negotiating on others. |
| 6-13-87 | Thomas Lomas | Administrative Order | FP | Clark | Hearing set 10-10-87. |
| 6-15-87 | Robert O'Donnell | Administrative Order | NE | Kennedy | Settled. |
| 7-22-87 | City of Inwood | Administrative Order | NE | Nansen | Hearing set for 10-4-87. |
| 8-22-87 | Cattlemen's Steak & Provisions, Ltd. | Administrative Order | NE | Murphy | New case; settled. |
| 8-18-87 | Great Rivers Co-op | Administrative Order | NE | Lands | New case. |
| 8-17-87 | City of Naples | Administrative Order | NE | Nansen | New case. |
| 8-17-87 | City of Bonaville | Administrative Order | NE | Nansen | New case. |
| 8-24-87 | Nich Metals Co. | Administrative Order | AD | Lands | New case. |
| 8-27-87 | Villa, /in Remembrance Area. | Administrative Order | NE | Murphy | New case. |

Allen Stokes reported that the Administrative Rules Review Committee has met since the last Commission meeting, but they have not discussed the Underground Tank Monitoring rules any further. Staff is investigating to find out what they are going to do with this rule.

In response to a request by Chairman Schlutz, Mr. Stokes gave an update on the Oran Sanitary District case.

Discussion took place regarding the growing number of cases under appeal and the possible review of rulemaking as it pertains to administrative penalties.

Keith Uhl asked if the Commission referred a noncollection to the Attorney General would the Attorney General be limited to simply enforcing the collection or can he prosecute a subsequent charge.

Mike Murphy of the Legal Bureau stated that if compliance is achieved, except for payment of a penalty, the Department normally does not ask for anything further than payment of the penalty plus interest. He added that the Attorney General's Office could seek more, it depends on what the Department is asking for when they refer it. He stated that he does not know if the Attorney General's Office has the authority to seek additional prosecution on their own.

LITIGATION UPDATE

John Sarcone of the Attorney General's Office stated that a listing of the cases referred in the past two years is contained in the monthly report item. Mr. Sarcone stated that at the last Commission meeting Clark Yeager requested an update on cases that have been settled. Mr. Sarcone reported that 38 cases were resolved in the past two years. Sixteen of those cases were resolved at the recommended penalty figure, sixteen were resolved at less than the penalty figure, and six which were all consent decrees were settled at a higher figure. Mr. Sarcone expanded on details of several individual cases. He reported that in regards to the Aidex case, a motion to dismiss filed by a chemical company was argued in federal district court in Sioux City today. It will be awhile before there will be any ruling on that case.

Mr. Sarcone introduced David Sheridan, a new staff member in the Attorney General's Office, and added that he feels that Mr. Sheridan will do an excellent job working with the Commission.

UNDERGROUND STORAGE TANK TASK FORCE

Richard Timmerman reported that the former Underground Storage Tank Task Force Committee met in August to discuss the level of clean-up for background contamination, and to discuss where sniffer wells could be used. He stated that it was the feeling of the majority of the committee that we should be consistent with the federal rules. Mr. Timmerman added that presently there are no federal rules but proposed federal rules have been published and will be implemented approximately by May, 1988. There is no listing of clean-up levels in those rules; rather, it will be a case-by-case review situation. The reasoning behind that is that each case will vary due to various factors.

The following draft rules will put the Department in line with the EPA proposals. Staff is seeking Commission approval to take the proposed rules to Notice of Intended Action at the October Commission meeting.

Revise Chapter 135--Underground Storage Tanks by adding the following:

135.7(3) Testing or monitoring for vapors using a sniffer well may be used only if:

a. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

b. The stored regulated substance is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation area in the event of a release from the UST system;

c. The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture so that a release could go undetected for more than 30 days;

d. The level of background contamination in the excavation area will not interfere with detection of releases from the UST system and, when measured in the soil gas, is no greater than 500 ppm of total hydrocarbons;

e. The vapor monitors are designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system and are capable of detecting any significant increase in concentration of total hydrocarbons above background levels;

f. In the UST excavation area, the site is assessed to assure compliance with the requirements in paragraphs 135.7(3)(a) through (e) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation area from any portion of the UST system; and

(g) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

The Commission agreed with the draft rules as presented.

REFERRALS TO THE ATTORNEY GENERAL

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

The Director requests the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the Commissioners and are confidential pursuant to Iowa Code Section 22.7(4).

Chicago Northwestern Railroad -- Air Pollution
City of Garner -- Wastewater
Warner Livestock -- Wastewater
Boyer Valley Company -- Wastewater
Elings, Frey, and Catron -- Solid Waste/Penalty

City of Garner - Mike Murphy briefed the Commission on the history of this case. He stated that there were representatives present from the city of Garner and invited them to speak.

APPOINTMENT -- CITY OF GARNER

Thomas Prock, City Attorney, stated that they are aware of the severity of the situation. He added that they are confronted with some major costs in connection with this matter. He then asked Gary Sindelar, Project Engineer, to characterize for the Commission what has been done and their plans for the future.

Mr. Sindelar described the city of Garner's treatment facility, gave a history of the facility and explained problems encountered. He stated that sources of flow were a problem and the city did a study to locate the serious problem areas; this has helped somewhat. He stated that the city submitted a plan of action last year and had hoped to finish the project by this time. He added that the city took enforcement actions on the local creamery and a sampling manhole has been constructed in the creamery. Also, they have purchased a sampler to sample the waste stream. Mr. Sindelar stated that the city has requested a change in completion schedule due to costs. Concrete from a paving project will be used as riprap at the lagoon, and clay materials from a storm sewer project will be used to construct a dike. He stated that the city intends to do the project, but feels they should explore every avenue to reduce costs. The mayor and city council of Garner feel that they need to pursue a Community Development Block Grant for one more year. Mr. Sindelar stated that they should receive an answer to the CDBG grant by next spring, and the project can be completed by next summer.

Mayor Ivan Dodd stated that revenue bonding and block grant money are their only options for grants. He stated that they do not want to put the project off any further but that their main concern is to get the most for the dollar spent. It was felt that taxpayers would be saved a lot of money by using products from another project. He stated that one of the reasons for appearing before the Commission is to ask that the city be given a time frame for this project that they can live with.

Discussion followed regarding the city growth factor, time frame, costs, type of lagoons, treatment, block grants, high flows, and discharge numbers under the new permit.

Nancylee Siebenmann asked Mike Murphy if staff might have any suggestions of interim measures to be taken until the city can get a block grant.

Mr. Murphy explained that when the city's request for an extension was denied last March, the Department invited them to explore options for complying through some sort of interim measures. No response was received. He added that the administrative order referred to BOD concentration limits rather than flow violations. Their proposal is to go with aeration. Mr. Murphy stated that aerators can be put in fairly readily. If they began immediately, they could possibly get enough done to comply with an injunction to comply with the concentration limits. With some type of interim treatment, they would meet limits under their new permit.

Motion was made by Keith Uhl for referral to the Attorney General's Office to seek injunctive relief to complete construction by July 1, 1988, with said construction to fully comply with final effluent limits. Secondly, to immediately seek injunctive relief to bring the city of Garner within their

present effluent limits, and to seek a civil penalty consistent with the litigation report. Seconded by Charlotte Mohr. Motion carried unanimously.

APPOINTMENT -- RODNEY VLIEGER

Rodney Vlieger, Hickok and Associates, presented to the Commission the findings of a report prepared by Hickok and Associates entitled "Review of Pesticides in Iowa Groundwater." The impetus for doing the study was a result of data and reports the state had presented during the last legislative session dealing with the groundwater bill. The three basic studies that were looked at were: (1) Big Springs, (2) Little Sioux River Basin in southwest Iowa, and (3) Municipal Water Supply Survey.

Mr. Vlieger stated that his review was to show the following: (1) areas where there was direct disagreement between the data presented and the conclusions reached by the authors of the initial reports and his review, (2) areas where there was agreement between his review and the authors review, and (3) areas where the data would support entirely different equally plausible conclusions.

An executive summary of the report was sent to each Commissioner and to the Department. A copy of the complete report was previously presented to Chairman Schlutz, and three copies were submitted to the Department.

Mr. Vlieger explained the report in detail and added that they have prepared a separate report on recommendations for further studies. He stated that, in summary, the report indicates that a better data base is needed if the state is going to use the studies as a means of gaining the legislation of rules, also that pesticides are not infiltrating the root zone in detectable quantities.

Nancylee Siebenmann commented that, in reference to Mr. Vlieger's statement where there were some concentrations of pesticides they fell within the health guidelines, it was her understanding that there were no health guidelines that provided standards to be used.

Mr. Vlieger responded that until recently that was true, but EPA was charged with the task of establishing maximum contaminant levels for a good number of pesticides, specifically the ones that are in common usage. He added that the draft for these standards was released approximately a month ago.

Chicago Northwestern Railroad

James Combs briefed the Commission on the history of this case. Mr. Combs stated that since the litigation report was prepared, Chicago Northwestern Railroad has agreed to negotiate a consent decree with penalty.

Motion was made by Nancylee Siebenmann for referral to the Attorney General's Office. Seconded by Donna Hammitt. Motion carried unanimously.

Boyer Valley Company

James Combs briefed the Commission on the history of this case.

Motion was made by Richard Timmerman for referral to the Attorney General's Office. Seconded by Donna Hammitt. Motion carried unanimously.

Elings, Frey, and Catron

James Combs briefed the Commission on the history of this case.

Motion was made by Charlotte Mohr for referral to the Attorney General's Office. Seconded by Nancy Lee Siebenmann. Motion carried unanimously.

PROPOSED LEGISLATION

Keith Uhl reported that the Legislative Committee met with the Director and his staff and will propose the following items to be included in the legislative package:

1. Supplemental appropriation to pay dues of \$60,600 to the Midwest Low Level Radioactive Waste Compact Commission.
2. Authority to establish a revolving loan fund for the use of sewer construction funds. Until FY-90, this would be one-half grant and one-half loan money; after FY-90, it would go to 100 percent loan funding.
3. Authority within the Department as to certification of environmental laboratories.
4. Supplemental appropriation of \$493,000 for payment of Aidex clean-up costs which is presently debited against the State Construction Grant Program.
5. Abolish the EPC and NRC Commissions and establish a nine-person Commission to have overall supervisory responsibility for the entire department in the areas of budget, rules and referrals. This would include the Energy Division and the Waste Management Authority Division.

Keith Uhl stated that he would like the Commissioners, particularly in regards to number five, to think about the proposed legislation, receive comments, and give their positions at the October Commission meeting.

Director Wilson asked that the Commissioners keep an open mind and make their decision on what is good for good government rather than on emotion and concern that things will go wrong if those changes are made.

RECESS

Chairman Schlutz recessed the meeting at 5:15 p.m. Monday, September 21, 1987.

MEETING RECONVENES AT 8:30 A.M. SEPTEMBER 22

REFERRALS TO THE ATTORNEY GENERAL -- CONTINUED

Warner Livestock

Mike Murphy briefed the Commission on the history of this case.

Donald Nieman, Attorney for Ed Warner, addressed the Commission stating that Mr. Warner has been trying for the past eight months to resolve this matter. He stated that the FDIC put a levy upon Mr. Warner's property when the People's National Bank of Albia closed. He added that MW Livestock has submitted an offer to buy the land from FDIC, who has cashed the escrow checks, but now refuses to acknowledge that there is a contract. Mr. Nieman further explained problems and red tape encountered with the FDIC and ASCS.

Mr. Nieman stated that he has advised the FDIC's counsel that this matter is before the Department. He added that he would like a 30-day notice that this will be referred to the Attorney General so that he can impress on the FDIC the importance of the situation in this matter.

Charlotte Mohr stated that she knows it is difficult to work with the FDIC and that maybe some additional time should be allowed before referral. Chairman Schlutz reminded the Commission that this referral has been previously presented to the Commission.

Motion was made by Keith Uhl to table the referral for thirty days.

Discussion followed in regards to tabling the referral.

Director Wilson suggested that the referral be accompanied by a letter to the Attorney General asking them not to begin prosecution prior to thirty days.

Keith Uhl withdrew his motion to table the referral.

Motion was made by Keith Uhl for referral to the Attorney General's Office with express provision that no litigation be initiated for thirty days. Seconded by Charlotte Mohr. Motion carried unanimously.

EMERGENCY ADOPTION -- AMENDMENTS TO CHAPTER 20.2, AIR QUALITY RULES

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

The Department is requesting that the Commission emergency adopt an amendment to the definition of "emission standard" contained in 567--20.2(455B).

The proposed amendment is to satisfy Federal Environmental Protection Agency program requirements. It is being adopted and implemented on an emergency basis because the amendment to the definition is not a change in the meaning of the term "emission standard," but merely clarification and because the discrepancy, although it does not affect implementation of the state program, does affect federal delegation. The regulated public is not affected by this rule amendment.

A copy of the amendment is attached.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Emergency Adopted and Implemented

Pursuant to Iowa Code section 455B.133, the Environmental Protection Commission hereby emergency adopts an amendment to the definition of "emission standard" contained in 567--20.2(455B).

A review of changes to the state's stack height regulation (see ARC 6280, 1/15/86) by the U.S. Environmental Protection Agency has resulted in a request by the agency to modify the emission standard definition.

The main difference between the existing definition and the one recommended by EPA is the concept of continued compliance. The emission standard definition which is adopted is identical to the federal definition at 40 CFR part 51.100(z) as amended November 7, 1986.

This amendment is adopted to satisfy Federal Environmental Protection Agency program requirements. It is being adopted and implemented on an emergency basis because the amendment to the definition is not a change in the meaning of the term "emission standard," but merely a clarification and because the discrepancy, although it does not affect implementation of the state program, does affect federal delegation. The regulated public is not affected by this rule amendment.

For these reasons, the Environmental Protection Commission finds that, pursuant to Iowa Code section 17A.4(2) and 17A.4(2) that public notice and participation is impracticable and that the normal effective date of this rule should be waived and the rule be made effective upon filing on September 22, 1987.

The Environmental Protection Commission adopted this rule at a regular meeting on September 22, 1987.

This rule implements Iowa Code Chapter 455B.

The definition of "emission standard" in 567--20.2(455B) is stricken and the following definition is inserted in lieu thereof.

"Emission limitation" and "emission standard" mean a requirement established by a state, local government, or the administrator which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

Date

Larry J. Wilson, Director

Motion was made by Charlotte Mohr to approve Emergency Adoption--Amendments to Chapter 20.2, Air Quality Rules. Seconded by Nancy Lee Siebenmann. Motion carried unanimously.

AMENDMENTS TO NEW SOURCE PERFORMANCE STANDARDS AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

The Department has adopted by reference the Federal New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) through May 1, 1985. Since that date, additional NSPS and NESHAPS subparts have been promulgated by the Environmental Protection Agency and several revisions have been made in the test methods and procedures required for NSPS and NESHAPS regulated sources.

The attached notice of intended action proposes to make the Department's rules regarding NSPS consistent with 40 Code of Federal Regulations Part 60 and the

Department's rule regarding NESHAPS consistent with 40 Code of Federal Regulations Part 61.

The following NSPS standards have been promulgated by EPA since May 1, 1985:

- 1) Iron and steel plants - (Subpart Na)
potential sources - none known
- 2) Equipment leaks of VOC from on-shore natural gas processing plants - (Subpart KKK)
potential sources - none known
- 3) On-shore natural gas processing: SO_2 emissions - (Subpart LLL)
potential sources - none known
- 4) Nonmetallic mineral processing plants - (Subpart OOO)
potential sources - 260 licensed operators at 1200 locations
known sources - one
- 5) Industrial-commercial-industrial steam generating units - (Subpart Db)
known sources - five
- 6) Volatile organic liquid storage vessels - (Subpart Kb)
potential sources - none known

Additional NESHAPS subparts have been promulgated by the Environmental Protection Agency since May 1, 1985. Four of these subparts regarding radionuclide and radon 222 emissions are not delegable to the states by EPA. Iowa is seeking delegation of the remaining NESHAPS standard for inorganic arsenic. There are no known sources in Iowa subject to this standard.

The adoption of the attached amendments to 567--23.1(455B) Iowa Administrative Code would not impose any additional restrictions on industry, but merely transfer the authority to the Department for enforcing the emission standards and for issuing construction permits for any affected facilities proposing to locate in Iowa.

The additional work load to the Department resulting from adoption of these rules is expected to be minimal since NSPS only applies to new construction or modification and many potential sources are already being inspected on a routine basis.

The Commission will be requested to approve the attached rules for public notice and comment during its October meeting.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 23, "Emission Standards for Contaminants" by proposing to adopt by reference recently promulgated federal regulations pertaining to new source performance standards and emission standards for hazardous air pollutants and by

including, as facilities affected by these standards, seven additional source or pollutant categories.

In order to prevent new air pollution problems, by section 111(b)(1)(A) of the Clean Air Act, the Administrator of the Environmental Protection Agency was required to publish a list of categories of major sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger health or welfare. Regulations establishing standards of performance for new sources within each category were promulgated and have been adopted by reference by the Department. Each standard of performance establishes allowable emission limitations that reflect the degree of emission limitation which is achievable through the application of the best technological system of continuous emission reduction. These regulations apply only to "new sources," that is, sources, the construction or modification of which is commenced after the proposal date of the individual rule. The rules are adopted by reference by subrule 567--23.1(2)(455B).

Similarly, by Section 112 of the Clean Air Act the EPA was required to adopt emission standards for "hazardous air pollutants," those pollutants which cause or contribute to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness. These standards apply to new and existing sources and are adopted by reference by subrule 567--23.1(3)(455B).

In greater detail, the following amendments are proposed:

Item 1 amends subrule 567--23.1(2)(455B) by including, as federal regulations adopted by reference, those regulations pertaining to 40 C.F.R. part 60 which have been promulgated through June 4, 1987. Part 60, which sets forth federal standards of performance for new stationary sources, is amended by adding the six new source categories specifically adopted herein and by amending various emission standards, opacity standards and testing methods.

Item 1 further amends subrule 567--23.1(2)(455B) by adding, as facilities specifically affected by the standards of performance for new stationary sources, the following types of facilities: iron and steel plants, on-shore natural gas processing plants, nonmetallic mineral processing plants, industrial-commercial-institutional steam generators, and volatile organic liquid storage vessels.

Item 2 amends subrule 567--23.1(3)(455B) by including, as federal regulations adopted by reference, those regulations pertaining to 40 C.F.R. part 61 which have been promulgated through March 19, 1987. Part 61 which sets forth emission standards for hazardous air pollutants is amended by the addition of one new source category. Facilities in this source category which are affected by this amendment are primary copper smelters, glass manufacturing plants and arsenic plants.

Any person interested in receiving a copy of the federal regulations proposed to be adopted by reference may contact the Department of Natural Resources. Copies are available upon request from the Department for the cost of reproduction.

Any interested party may file a written statement of position on the subjects covered by the proposed rules no later than _____. These written statements should be directed to the Director of the Department of Natural Resources, 900 East Grand Avenue, Des Moines, Iowa 50319. Persons or organizations are also invited to present oral or written comments at a public hearing on these proposed amendments which will be held on _____.

These rules are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Subrule 567--23.1(2)(455B) is amended as follows:

23.1(2) New source performance standards. The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended through May-1, -1985 June 4, 1987, are adopted by reference and shall apply to the following affected facilities. The corresponding 40 C.F.R. Part 60 subpart designation is in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C) and the general provisions (Subpart A) of 40 C.F.R. Part 60 also apply to the affected facilities.

Further amend rule 23.1(2) by revising the following paragraphs:

bb. Petroleum storage vessels. Any storage vessel for petroleum liquids constructed, reconstructed, or modified after June 11, 1973, and prior to May 19, 1978, having a storage capacity greater than 151,416 liters (40,000 gallons). (Subpart K)

cc. Petroleum storage vessels. Any storage vessels for petroleum liquids constructed after May 18, 1978 and prior to July 23, 1984, having a storage capacity greater than 151,416 liters (40,000 gallons). (Subpart Ka)

Further amend rule 23.1(2) by adding the following paragraphs:

yy. Iron and steel plants. Secondary emissions from basic oxygen process steelmaking facilities for which construction commenced after January 20, 1983. (Subpart Na)

zz. Equipment leaks of VOC from on-shore natural gas processing plants. A compressor and all equipment defined in 40 C.F.R., Part 60.631 which commences construction after January 20, 1984. (Subpart KKK)

aaa. On-shore natural gas processing: SO₂ emissions. Each sweetening unit and each sweetening unit followed by a sulfur recovery unit which commences construction after January 20, 1984. (Subpart LLL)

bbb. Nonmetallic mineral processing plants. Each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or rail car loading station in fixed or portable nonmetallic mineral processing plants for which construction was commenced after August 31, 1983. (Subpart 000)

ccc. Industrial-Commercial-Institutional Steam Generating Units. Steam generating units for which construction commenced after June 19, 1984 and which has a heat input capacity of more than 100 million Btu/hour. (Subpart Db)

ddd. Volatile Organic Liquid Storage Vessels. Volatile organic liquid storage vessels which commence construction after July 23, 1984. (Subpart Kb)

ITEM 2. Subrule 567--23.1(3)(455B) is amended as follows:

567--23.1(3) Emission standards for hazardous air pollutants. The federal standards of emissions for hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended through May-1, -1985 March 19, 1987, are adopted by reference, except 40 C.F.R. subsection 61.20 through subsection 61.23, subsection 61.90 through 61.98, subsection 61.100 through 61.108, subsection 61.120 through subsection 61.126, and subsection 61.145 through subsection 61.147, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 C.F.R. Part 61 subpart designation is in parentheses. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

Further amend subrule 23.1(3) by adding the following paragraph:

h. Inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities. Each metallic arsenic production plant and each arsenic trioxide plant that processes low-grade arsenic bearing materials by a roasting condensation process. (Subpart P)

Mr. Stokes stated that this is an informational item and will be presented as a Notice of Intended Action at the October Commission meeting. NOTICE OF INTENDED ACTION -- CHAPTER 100, "SCOPE OF TITLE-DEFINITIONS-FORMS-RULES OF PRACTICE", AND CHAPTER 102, "PERMITS"

Iowa Code section 455B.304 requires the Commission to adopt rules prohibiting the disposal of uncontained liquid waste in a sanitary landfill.

Federal regulations for hazardous wastes in 40 CFR 264.314 and 40 CFR 265.315 reference a test to demonstrate the absence or presence of free liquids in either a containerized or a bulk waste. The test, called the Paint Filter Liquids Test Method 9095 EPA SW 846, is easily applied to various materials. A 100-milliliter or 100-milligram sample is placed on a standard 60-mesh conical paint filter for five minutes. If any liquid passes through the filter after five minutes, the waste is determined to contain free liquids.

The proposed rule changes are to add the definition of a free liquid to the definitions contained in rule 100.2(455B) and add a portion to rule 102.14(455B) which would prohibit free liquids from being disposed in a sanitary landfill.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.304, the Environmental Protection Commission proposes to adopt amendments to 567--Chapter 100, "Scope of Title-Definitions-Forms-Rules of Practice," and 567--Chapter 102, "Permits," Iowa Administrative Code.

Iowa Code section 455B.304 requires the Commission to adopt rules prohibiting the disposal of uncontained liquid waste in a sanitary landfill.

Federal regulations for hazardous wastes in 40 CFR 264.314 and 40 CFR 265.315 reference a test to demonstrate the absence or presence of free liquids in either a containerized or a bulk waste. The test, called the Paint Filter Liquids Test Method 9095 EPA SW 846, is easily applied to various materials. A 100-milliliter or 100-milligram sample is placed on a standard 60-mesh conical paint filter for five minutes. If any liquid passes through the filter after five minutes, the waste is determined to contain free liquids.

The proposed rule changes are to add the definition of a free liquid to the definitions contained in rule 100.2(455B) and add a portion to rule 102.13(455B) which would prohibit free liquids from being disposed in a sanitary landfill.

Any interested person may file with the Director written comments on the proposed amendment through November 13, 1987. Interested persons may also provide oral comments at public hearings to be held Des Moines, Iowa City and Council Bluffs as follows: Tuesday, November 10, 1987 at 3:00 p.m. in the east half of the fifth floor conference room of the Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa; on Thursday, November 12, 1987 at 3:00 p.m. in the conference room of the Geological Survey Bureau, 125

North Capitol Street, Iowa City, Iowa; and on Friday, November 13, 1987 at 3:00 p.m. in the Community Hall Room, 205 South Main, Council Bluffs, Iowa.

This rule is intended to implement Iowa Code section 455B.304.

The following amendments are proposed.

ITEM 1. Amend rule 567--100.2(455B) by adding the following definition:
"Free liquid" means the liquid produced when a 100 milliliter or 100 milligram representative sample is placed on a standard mesh number 60 (fine mesh size) conical paint filter for five minutes. Method 9095 EPA SW 846.

ITEM 2. Amend rule 567--102.13(455B) by adding the following subrule:
102.13(8) Free liquids or waste containing free liquids. No free liquids or waste containing free liquids shall be disposed in a sanitary landfill.

Date

Larry J. Wilson, Director

Mr. Stokes stated that this is an informational item and will be presented as a Notice of Intended Action at the October Commission meeting.

REVISIONS TO CHAPTERS 50, 51 AND 52--WATER RIGHTS ALLOCATION RULES

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

It is recommended that the Commission approve the attached copy of revisions to Chapters 50, 51 and 52 regarding water conservation and priority allocation. A copy of the Public Participation Responsiveness Summary is also attached.

The revisions to Chapters 50, 51 and 52--Water Rights Allocation Rules were sent to 26 interested and affected groups. In addition, a general news release was made.

Several grammatical and stylistic changes were suggested and most were adopted. Two substantive changes were made. Under Item 11, new paragraph 52.2(4)"b" pertaining to backflow-prevention valves is modified to conform with existing paragraph 52.2(1)"e". Under Item 4, new paragraph 52.9(2)"d" is amended by adding stream electric generating plants to examples of essential water-requiring activities.

On May 20, 1987, the Commission approved a Notice of Intended Action to hold three public hearings and receive comments on the proposed revisions. The public hearings were held on July 7, July 8 and July 10, 1987, and the written comment period closed on July 20, 1987. Three comment letters were received. One oral comment was received at the public hearing at Des Moines on July 8. No oral comments were received at the hearings on July 7 at Iowa City and July 10 at Council Bluffs. The comments and responses are included in the Public Participation Responsiveness Summary.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

**PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY
FOR PROPOSED WATER CONSERVATION AND
PRIORITY ALLOCATION RULES**

**Rules providing administrative procedures
for implementing water conservation requirements
and priority allocation suspension or restriction of water
use in accordance with Iowa Code Sections 455B.265, 455B.266
and 455B.271.**

The attached information constitutes a summary of written comments received on the proposed rules and amendments. Three comment letters were received. One comment was received at the public hearing in Des Moines on July 8, 1987. That comment was repeated in a comment letter (see comment No. 1). No oral comments were received at the public hearings on July 7, 1987 at Iowa City and July 10, 1987 at Council Bluffs.

1. Commentor: Dean A. Fagerlind, Iowa Golf Course Superintendents' Association.

Comment: The area of the rules that we as an Association disagree with is our placement within the priority allocation system. When trying to maintain golf course turf-grass, it is neither a frivolous nor incidental commodity but rather an absolute necessity for our multi-million dollar industry. There are 270 nine-hole and 65 eighteen-hole golf courses in the state of Iowa, all of which produce goods and services as well as employ hundreds of full and part-time employees. A conservative estimate says that the average eighteen-hole facility will have annual operating expenditures of \$1.5 million, and the average nine-hole course expends half that figure. We believe that \$300 million places us as a major service industry and we would ask the Commission to consider moving us to the industrial category.

Discussion: The following definitions of industrial and recreational uses have been proposed as a part of these rules:

"Industrial use" means a use of water by manufacturing, processing, commercial, and other industrial facilities incidental to providing a product or a service; excluding domestic use, irrigation use, livestock use, power generation use, and recreational and aesthetic use. Examples include but are not limited to manufacturing, food processing, industrial cooling, excavation and processing of rock and gravel products, commercial laundries, cooling of perishables and electrical power generation other than for public consumption.

"Recreational and aesthetic use" means a use of water which can be easily curtailed and is not essential for the preservation of life, the general welfare, or the state's economic base. Examples include but are not limited to flooding of wildlife areas; filling of pools and fountains; nonessential cooling; car washing; street cleaning; washing of other exterior surfaces such as windows and walls; amusement park-type water rides; turf watering such as lawns, golf courses, athletic fields; and watering of landscape plantings.

Golf course watering is not an essential use for the preservation of life, general welfare or state's economic base; therefore, it is a recreational use.

Recommended Action: None.

2. Commentor: Ralph F. Schlenker, Iowa Power and Light Company.

Comment: Iowa Power supports the inclusion of "power generation use" in subrule 52.2(2). This amendment recognizes the essential need for water in the generation of power and the responsibility a power company has to plan for and supply the electric needs of its customers.

Recommended Action: None.

3. Commentor: Ralph F. Schlenker, Iowa Power and Light Company.

Comment: Regarding revisions to subrule 52.9(2), Iowa Power suggests that an alternative determination of consumptive use be allowed. For a cooling tower, for example, the permittee should be able to submit the expected consumptive use calculated according to design specifications.

Discussion: Consumptive use has been defined as not only the physical loss as water, such as by evaporation, but also the loss of water with respect to its source. For example, if water is withdrawn from a deep aquifer and subsequently is discharged to a surface stream, the withdrawal may be considered to be entirely consumptive with respect to the deep aquifer. Therefore, the requested determination of consumptive water use from a cooling tower may not always be appropriate.

In Subrule 52.9(3), water withdrawal and discharge amounts are required for an emergency conservation plan "as applicable." The purpose of this information is to determine consumptive use. If this information is not available, it would certainly be applicable to use calculated evaporation from a cooling tower to determine consumptive use.

Recommended Action: None.

4. Commentor: Ralph F. Schlenker, Iowa Power and Light Company.

Comment: Listed in Subrule 52.9(2) are several conditions when specific emergency conservation requirements normally would not be included in a water use permit. Iowa Power supports conditions (a) through (f). Concerning paragraph (d), however, we believe power generation is an "essential activity." It is expected that water shortages would occur

during periods of extended drought and high temperatures. At those times, electric demand is at its highest and it is essential that Iowa Power have access to the water resources necessary to operate its generating facilities. We therefore recommend Subrule 52.9(2), paragraph (d), be revised as follows:

- d. The proposed or permitted use is unable to conserve water without substantially disrupting or ceasing an essential activity which requires water such as operating a steam electric generating plant, watering livestock or operating a commercial laundry.

Discussion: The term "essential activity" is intended to relate to the individual permittee only. The overall relative importance of water uses has been established by the legislature in the priority allocation plan as given in subrule 52.10(3).

The 1985 State Water Plan report proposed the following for emergency conservation:

"Generally, emergency conservation measures would give users full access to water at the level necessary to maintain minimum operations or service. Emergency conservation would not require closing of industrial facilities, [closing of] power plants or halting of irrigation, but it may require ceasing certain nonvital water-consuming operations of such facilities."

This concept is the basis for the provision in Subrule 52.9(2), paragraph d. In particular, the intent is that businesses not be required to cutback production as a means of conserving water. The provision primarily exempts businesses from specific emergency conservation conditions when water use can only be reduced by a cutback in production. Operation of a steam electric generating plant would likely meet this criterion and could appropriately be added as an example in Paragraph d. However, it should be noted that the exempted water uses are only examples. Permits for such uses will not be exempt from specific emergency conservation permit conditions if significant amounts of other "nonessential" uses (e.g. lawn watering) are included.

Recommended Action: Make suggested change.

5. Commentor: Ralph F. Schlenker, Iowa Power and Light Company.

Comment: Subrule 52.9(3)(c) requires that emergency conservation plans provide for a 50 percent reduction in consumptive water use. If this requirement cannot be met, the Department may grant a variance if the water use is determined to be essential. Iowa Power supports the allowance for such variances and believes power generation should be exempted. An electric utility has a responsibility to plan for and supply its customers with adequate electric power and must be assured a dependable supply of water for generation. A 50 percent reduction in consumptive use at a power station will likely require a substantial reduction in generation capability. Maintenance of electric service is

vital to the public safety and health and should not be constrained by such a condition on its generating facilities.

Discussion: See discussion to comment Nos. 4 and 10.

Recommended Action: None.

6. Commentor: John M. Lewis, Iowa Utility Association.

Comment: Regarding the proposed definition of "power generation use" in Rule 50.2, we question the use of the term "public consumption." This term is in the law so it must be in the rules, but it needs to be interpreted. Specifically, what does "public consumption" mean? Does it mean generation for use only by public bodies such as federal, state and local government agencies? Does it mean generation for use only in public places, excluding uses for such as private residences and apartments? Does it exclude generation for use by the power plant which is used in the power production process? These questions should be answered before drought conditions exist and while it can be done in an orderly and reasonable manner.

Discussion: The intent of the definition is for "power generation use" to apply to public utilities in which power is generated for distribution and sale to the public.

Recommended Action: Modify the definition of "power generation use" by deleting "public consumption" and inserting in its place "distribution and sale to the public."

7. Commentor: John M. Lewis, Iowa Utility Association

Comment: Subrule 52.2(2) states that the amount of water authorized for power generation use shall be consistent with industry-wide usage for the same or similar purposes.

Is this statement broad enough to give recognition to the fact that the amount of water used by a power generation facility will vary by the design of the plant (different types of cooling systems) and the size of the facility? We believe industry standards can be developed which reflect these variables but are concerned that a narrow definition will impose one standard on all facilities.

Discussion: The proposed amendments to Subrule 52.2(2) simply make the subrule consistent with the existing rules. The existing rules include power generation as an industrial use, whereas power generation is a separate type of use in the proposed rule amendments. However, it would be appropriate to make other clarifications to this subrule at this time.

Recommended Action: Add the underlined wording to Subrule 52.2(2) as follows: . . . same or similar purposes and types of facilities and shall . . .

8. Commentor: John M. Lewis, Iowa Utility Association.

Comment: With respect to subrule 52.7(2), we are confident that the staff, in making its determination to invoke the emergency provisions to suspend or restrict the water use of an electric generating station, will take into consideration the imminent danger or substantial injury to the public health, or safety or welfare which would result from an inadequate power supply. It is conceivable that in a worst-case situation generating facilities on inland water sources would need to remain operative. The Commission and staff can be assured of our utmost cooperation in evaluating the alternatives should such a situation arise. This rule also suggests that an emergency order can be stayed, modified or vacated at a hearing before the Commission. We would raise the question as to whether the rules should establish a procedure for such an emergency hearing.

Discussion: With respect to procedures for an emergency hearing, the operation of the Environmental Protection Commission is governed by 567--Chapter 1, Iowa Administrative Code (IAC). While this chapter does not have a specific provision for "emergency" hearings, the general rule provisions can accommodate an emergency meeting. More specifically, the Chairman of the Commission or the Department Director may be contacted to establish a meeting of the Commission under 567 IAC Subsection 1.2. Further, 567 IAC Subsection 1.4(2) makes an allowance for posting the Commission's agenda where circumstances prevent doing so at least 24 hours in advance of the meeting. Public participation and conduct of the meeting are addressed in 567 IAC Subsections 1.5 and 1.7.

Recommended Action: None.

9. Commentor: John M. Lewis, Iowa Utility Association.

Comment: Regarding subrule 52.9(2): Subpoints "a" to "c" -- We support these as stated. We would recommend the addition of power generation to the examples cited in subpoint "d" of this rule. We have addressed the rationale for this in our comments on Item 11 (See Comment No. 10).

Discussion: See Comment No. 4.

10. Commentor: John M. Lewis, Iowa Utility Association.

Comment: With respect to Subparagraph 52.9(3)c(1), we recommend the addition of "or use for power generation" at the end of the second sentence in this section. In power plants which use evaporative cooling systems (cooling towers), over 90 percent of the water use is consumptive and is required on a fixed ratio of water use per unit of production. It is virtually impossible to reduce this ratio by even 5 percent and, therefore, a 50 percent reduction requirement is not reasonable.

It appears that power plants will be exempt from emergency conservation provisions under 52.9(2) b-c and so it would be consistent to relieve them of the 50 percent reduction requirement under this section.

Discussion: Subparagraph 52.9(3)c(1) also provides for variances in the 50 percent reduction requirement when justification is provided. Variances are to be granted on a case-by-case basis and could include a

determination for a lower level of reduction. Therefore, it is not necessary and may not be appropriate to exempt power generation use from this provision.

Recommended Action: None.

11. Commentor: Missouri River Floodplain Irrigators.

Comment: Informal comments regarding 52.2(4)b were received by phone from three parties. The comments generally were that an American Water Works Association-approved reduced-pressure backflow-prevention valve is designed for municipal use and is more sophisticated than needed for watering turf and landscape plantings.

Discussion: We agree that this specification is not appropriate and the rule should be made consistent with Rule 52.2(1)e, "irrigation system check valve."

Recommended Action: Rewrite 52.2(4)b as follows:

b. Watering system backflow-prevention valve. Each permit authorizing the use of water for turf or landscape plantings shall require the permittee to submit documentation that an adequate check valve has been installed to prevent backsiphoning of contaminants into the water source before a fertilizer, pesticide, herbicide or other additive is introduced into the irrigation system.

12. Commentor: Representative Betty J. Clark, Legislative Rules Review Committee.

Comments: Various suggested wording changes.

Recommended Action: Make the following wording changes:

- 1) Item 4 -- strike "such"
- 2) Item 5 -- strike "therefor"
- 3) Item 6 -- strike "therefor"
- 4) Item 11 -- In the next to the last sentence, replace "such" with "that"
- 5) Item 11 -- Replace the last sentence with the following: "The emergency order shall remain in effect until a date specified in the order, unless the order is revoked or the expiration date modified, due to a change in the situation giving rise to the order or a decision following appeal."
- 6) Item 12 -- In proposed subparagraph 52.9(3)b.(1) replace "such" with "these"
- 7) Item 13 -- In the third paragraph of subrule 52.10(1), replace "such" with "that" in the last sentence.

ENVIRONMENTAL PROTECTION COMMISSION [567]
Adopted and Filed

Pursuant to the authority of Iowa Code sections 455A.6, 455B.105 and 455B.263, the Environmental Protection Commission amends Chapter 50, "Scope of Division- Definitions-Forms-Rules of Practice," Chapter 51, "Water Permit or Registration-When Required" and Chapter 52, "Criteria and Conditions for Authorizing Withdrawal, Division and Storage of Water," Iowa Administrative Code. These amendments implement Iowa Code sections 455B.265, 455B.266 and 455B.271 which provide the authorization and conditions under which the Department may require water use permits to contain water conservation conditions and may suspend or restrict water use by category of use.

Notice of Intended Action was published in the June 17, 1987, Iowa Administrative Bulletin as ARO 7682. In addition to oral comments received at the public hearing on July 8, 1987, the Department received three written responses.

Aside from nonsubstantive grammatical and stylistic changes, the adopted rules differ from the Notice of Intended Action in two respects. First, under Item 7, new paragraph 52.2(4)"b" pertaining to backflow-prevention valves is modified to conform with existing paragraph 52.2(1)"e". Second, under Item 12, new paragraph 52.9(2)"d" is amended by adding steam electric generating plants to examples of essential, water-requiring activities.

These rules were adopted by the Environmental Protection Commission at its September 2, 1987 meeting and will become effective on November 25, 1987.

These rules are intended to implement Iowa Code sections 455B.265, 455B.266 and 455B.271.

ITEM 1. Amend one definition in rule 50.2(455B) as follows:

"Consumptive use" means any use of water; except for a municipal or municipal-type use; which involves substantial evaporation, transpiration, or incorporation of water into a product or removal of water from a watercourse source without prompt return thereto. Consumptive uses include, but are not limited to, irrigation, evaporative cooling, and flooding of wildlife areas by withdrawals or diversions from watercourses or aquifers. Water use by community public water supplies is not considered to be consumptive in the administration of rules 52.3(455B), 52.4(455B) and 52.8(455B).

ITEM 2. Amend rule 50.2(455B) by deleting the following definitions: "industrial use," "irrigation use," "municipal use," and "municipal-type use."

ITEM 3. Amend rule 50.2(455B) by adding the following seven definitions:

"Community public water supply" means a system for the provision to the public of piped water for domestic use which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Domestic use" means a use of water for human consumption and sanitation and public safety (fire protection).

"Industrial use" means a use of water by manufacturing, processing, commercial, and other industrial facilities incidental to providing a product or a service; excluding domestic use, irrigation use, livestock use, power generation use, and recreational and aesthetic use. Examples include but are not limited to manufacturing, food processing, industrial cooling, excavation and processing of rock and gravel products, commercial laundries, cooling of perishables and electrical power generation other than for public consumption.

"Irrigation use" means a use of water which is artificially applied to land to aid the growing of general farm crops (hay, corn, soybeans, oats, grain sorghum and wheat) and specialty crops.

"Livestock use" means a use of water in the production of domestic animals such as drinking, sanitation and cooling.

"Power generation use" means a use of water incidental to the generation of electric power for distribution and sale to the public including process water (e.g., boiler makeup) and water for cooling purposes.

"Recreational and aesthetic use" means a use of water which can be easily curtailed and is not essential for the preservation of life, the general welfare, or the state's economic base. Examples include but are not limited to flooding of wildlife areas; filling of pools and fountains; nonessential cooling; car washing; street cleaning; washing of other exterior surfaces such as windows and walls; amusement park-type water rides; turf watering such as lawns, golf courses, athletic fields; and watering of landscape plantings.

ITEM 4. Amend subrule 51.6(4) as follows:

51.6(4) Rural water districts. A permit shall be required for withdrawals of water by any rural water district having its own source of water and such withdrawals shall be classified as a municipal-type use by a community public water supply.

ITEM 5. Amend subrule 52.2(2) as follows:

52.2(2) The amount of water authorized for industrial use or power generation use shall be consistent with industry-wide usage for the same or similar purposes and types of facilities and shall provide for growth where need therefor is demonstrated by the applicant.

ITEM 6. Amend subrule 52.2(3) as follows:

52.2(3) The amount of water authorized for municipal use by a community public water supply shall not exceed two hundred (200) gallons per day per capita except additional water may be provided for growth and industrial use where need therefor is demonstrated by the applicant.

ITEM 7. Rescind subrule 52.2(4) and insert in lieu thereof the following:

52.2(4) Recreational and aesthetic permits.

a. Authorized amount. The amount of water authorized for recreational and aesthetic uses shall be determined on a case-by-case basis.

b. Watering system backflow-prevention valve. Each permit authorizing the use of water for turf or landscape plantings shall require the permittee to submit documentation that an adequate check valve has been installed to prevent back-siphoning of contaminants into the water source before a fertilizer, pesticide, herbicide or other additive is introduced into the irrigation system.

This rule is intended to implement Iowa Code section 455B.265.

ITEM 8. Amend paragraphs 52.4(3)"a" and "b" as follows:

a. Two hundred gallon per minute (200 gpm) restriction on irrigation use and recreational and aesthetic use. New withdrawals of water for irrigation and recreational and aesthetic uses shall not be in excess of two hundred gallons per minute (200 gpm). Existing permits for irrigation and recreational and aesthetic uses that authorize withdrawal rates in excess of two hundred gallons per minute (200 gpm) shall not be renewed if serious impact on other water withdrawals or on groundwater piezometric levels occur or are forecasted to occur.

b. Two thousand gallon per minute (2000 gpm) restriction on industrial use and power generation use. New withdrawals of water for industrial and power generation uses at one plant location shall not exceed two thousand gallons per minute (2000 gpm).

ITEM 9. Amend paragraph 52.4(4)"d" as follows:

d. Priorities in renewal, modification and cancellation of permits. If permit renewals must be denied or if permits must be modified or canceled to prevent or abate water level declines which constitute a significant threat to the public interest in the availability of water for sustained beneficial use

of the aquifer, withdrawals of water for municipal-and-municipal-type-water systems community public water supplies and for agricultural research shall have priority over withdrawals of water for other regulated uses.

ITEM 10. Amend subrule 52.7(1) by adding paragraph "d" as follows:

d. Addition of conservation provisions. Modification to include conservation provisions is deemed necessary by the department.

ITEM 11. Amend subrule 52.7(2) as follows:

52.7(2) Emergency suspension or restriction. Notwithstanding any other rule or permit conditions, if the department finds that it is imperatively necessary in an emergency to protect from imminent danger or substantial injury either the public health, welfare, and or safety, or the public or private interest in lands or water, or to implement the priority allocation system pursuant to rule 52.10(455B), and these findings are incorporated into a written emergency order to the permittee, then the department may immediately suspend or restrict operations under a permit and require the permittee to take measures necessary to prevent or remedy the injury, either ~~to the public health, welfare, or safety or to the public or private interests in lands and waters.~~ The emergency order shall state an effective date appropriate to the situation which invoked the suspension or restriction and shall be immediately effective on such that date unless stayed, modified, or vacated at a hearing before the commission or by the court. The emergency order shall remain in effect until a date specified in the order, such-time-as unless the order is revoked or the expiration date modified, due to a change in the situation giving rise to the order no longer existing; or as granted from a decision following appeal procedures.

ITEM 12. Rescind rule 52.9(455B) and insert in lieu thereof the following:
567--52.9(455B) Water conservation.

52.9(1) General. The purpose of water conservation requirements is to preserve the availability of water which is withdrawn for use, as opposed to protected flow provisions in rules 52.3(455B), 52.4(455B), and 52.8(455B) which preserve instream flows.

Each permit granted after July 1, 1986, will include conditions requiring routine (day-to-day) conservation practices, and requiring emergency conservation practices after notification by the department. Existing permits may be modified to include conservation conditions pursuant to paragraph 52.7(1)"d," if deemed necessary by the department.

Only general provisions for routine conservation will be included in a permit, unless water is to be withdrawn from a protected water source designated in 567--chapter 53 which has specific requirements for routine conservation. Permit conditions requiring routine conservation are primarily intended to raise awareness of water usage, develop a preparedness for periods of water shortages, and minimize waste of water.

General conditions involving emergency conservation will be included in all permits. Specific emergency conservation conditions may be included in a water use permit pursuant to subrule 52.9(2). If specific emergency conservation permit conditions are required, they will be based on a water conservation plan developed by the permittee or applicant, in accordance with subrule 52.9(3), and approved by the department.

The purpose of emergency conservation is to minimize consumptive use of water from a source experiencing a temporary shortage. Emergency conservation restrictions will be imposed only when water shortages are imminent or actually exist, in accordance with rule 52.10(455B). Long-term water shortages may be dealt with in the protected source rules, 567--chapter 53.

52.9(2) Applicability of emergency conservation. Specific emergency conservation requirements may be made a condition of a water withdrawal permit if the proposed or permitted withdrawal could result in a significant consumptive use of water from a source which is likely to experience a short-term shortage.

A determination of the consumptive nature of a water use will be based on the hydrologic relationship of the sources of water withdrawal and wastewater discharge. If the source of withdrawal and discharge are the same, the consumptive use from the source will be considered to be the amount of water withdrawal minus the wastewater discharge. If the sources of withdrawal and discharge are hydrologically independent, then consumptive use from the source of withdrawal will be considered to be the total amount of withdrawal. Water sources which are in close hydrologic connection (e.g., an alluvial aquifer and adjacent stream) will be considered as the same source.

Specific emergency conservation requirements will not normally be included in a water use permit under any of the following conditions:

- a. The proposed or existing permitted water use involves a consumptive use of less than 25,000 gallons per day from any water source during periods of substantial water shortage.
- b. The proposed or permitted use is subject to protected stream flow conditions pursuant to rules 52.3(455B), 52.4(455B), and 52.8(455B).
- c. The water source for the proposed or permitted use is from a surface water impoundment or purchased storage owned by the applicant or permittee.
- d. The proposed or permitted use is unable to conserve water without substantially disrupting or ceasing an essential activity which requires water, such as operating a steam electric generating plant, watering livestock, or operating a commercial laundry.
- e. The proposed or permitted withdrawal is from a source of water which is not likely to experience a substantial short-term water shortage including, but not limited to, the Missouri and Mississippi Rivers and adjacent alluvial aquifers, the Jordan Sandstone Aquifer, and the Iowa Great Lakes.
- f. The source of water is or will be utilized by only the permitted or proposed water user and withdrawal from the source for the permitted or proposed use has no potential for affecting other water uses.

52.9(3) Water conservation plans. Unless specific emergency conservation permit conditions are not required in accordance with subrule 52.9(2), the applicant or permittee shall submit a water conservation plan with an application for a new water use permit or renewal of an existing permit. The department may also require a water conservation plan to be submitted by any existing permittee after a minimum of 90 days' notice. If an applicant is in doubt as to whether or not the application requires a water conservation plan, the department should be contacted and provided with a description of the proposed source of water, intended use, and desired amount and rate of withdrawal. The department will then make a determination of whether or not a conservation plan is necessary. If a water conservation plan is required with an application for permit renewal, the department will notify the permittee at least 120 days prior to expiration of the permit.

Water conservation plans shall describe the measures to be used to achieve water conservation and estimate water savings from each measure. Water conservation plans must contain the following information, as applicable, to be approved by the department.

- a. General provisions. The following information shall be included in all water conservation plans:

(1) A description of each source of water withdrawal (i.e., well or surface water intake) including the location, well depth, pumping rate, and date of installation.

(2) A description of wastewater discharge including the location and discharge frequency.

(3) Monthly withdrawal amounts from each source for the past five years.

(4) Monthly total water withdrawal amount for the past five years.

(5) Monthly total wastewater discharge amount for the past five years.

(6) A quarterly breakdown, by the water use categories in subrule 52.10(3), of total water use and estimated consumptive water use over the past five years.

(7) A description of any previous water shortage problems, including the cause, frequency, other affected parties, and how they were resolved.

(8) Identification of nearby water supplies which are potentially affected by or could potentially affect the proposed or permitted withdrawal.

(9) A means of identifying impending water shortage problems (e.g., water level in wells or a reservoir decline to a certain level or stream flows fall to a certain rate).

b. Routine conservation provisions. Consideration of routine conservation is encouraged although it is not normally required in a water conservation plan. Documented water savings from routine conservation measures will be credited towards emergency conservation requirements. Suggested routine conservation measures include:

(1) Use of water-saving plumbing devices or required use of these devices in building codes.

(2) Scheduling irrigation to minimize peak water use.

(3) Use of efficient irrigation techniques.

(4) Implementing programs to minimize lost water, such as piping leaks.

(5) Use of metered water billing by public water supplies.

(6) Utilizing best commercially-available technology to optimize efficiency of water use.

(7) Implementing recycling and reuse practices.

(8) Developing alternative water sources which are not susceptible to shortages.

(9) Increasing rates charged for water or eliminating reduced rates for large users.

c. Emergency conservation provisions. Water conservation plans shall contain emergency conservation provisions in accordance with the following criteria.

(1) General. The consumptive nature of a water use, as described in subrule 52.9(2) and determined from information required in 52.9(1)"A," shall be reduced by at least 50 percent over similar periods of normal use. This criterion does not apply to irrigation use. If this requirement cannot be met, justification for nonattainment shall be provided which must include documentation that an activity involving water use is essential and demonstration of use of best commercially-available technology. The department may then grant variances on a case-by-case basis.

Measures which will be credited for emergency conservation include, but are not limited to, the following: Documented water savings resulting from routine water conservation measures; shutdown, postponement, or curtailment of nonessential activities involving water use; switching to nonaffected sources for water supply; mitigation of consumptive uses by direct discharge of stored water or water from a nonaffected source to the affected water source; acquisition and retirement of existing consumptive uses from the affected

water source (credit for retirement of existing consumptive uses will be given only for the amount authorized during periods when emergency conservation is required); and imposing surcharges on water use during periods of shortage.

(2) Public water supplies. At a minimum, emergency water conservation plans for public water supplies must include provisions for restricting outside, consumptive water use.

(3) Irrigation water use. Emergency water conservation plans for irrigation water uses shall limit irrigation water use to the equivalent of one inch per irrigated acre per week for general farm crops and specialty crops, unless the water conservation plan contains other mitigating provisions such as listed in subparagraph (1) above.

Water conservation plans shall also address irrigation scheduling. Irrigation scheduling should attempt to provide approximately equal water use on each day of an irrigation cycle. Irrigation scheduling may be done in cooperation with other nearby irrigators who utilize the same water source.

This rule is intended to implement Iowa Code sections 455B.262 and 455B.265.

ITE 13. Renumber existing rule 52.10(455B) as rule 52.11(455B) and insert the following as rule 52.10(455B):

567--52.10(455B) Priority allocation restrictions.

52.10(1) General. After any event described in subrule 52.10(2) has occurred, the department will investigate and, if appropriate, may restrict water use according to the priority allocation plan as described in subrule 52.10(3). Prior to imposing the priority allocation plan, the department will normally require emergency conservation measures to be taken by existing permittees. The department will not normally require emergency conservation until a shortage of water is imminent and will not normally impose the priority allocation plan until an actual impairment of water usage exists.

The department will notify existing permittees of any emergency restriction or suspension of water use by written order pursuant to subrule 52.7(2). A permittee will be required to maintain daily records of water withdrawal and wastewater discharge, if any, while the emergency order is in effect. These records shall be available for inspection by the department to verify compliance with the order.

Suspension or restriction of water usage applicable to otherwise nonregulated water users shall be by emergency order of the director which the department shall cause to be published in local newspapers of general circulation and broadcast by local media. The emergency order shall state an effective date of the suspension or restriction and shall be immediately effective on that date unless stayed, modified or vacated at a hearing before the commission or by a court.

The department will lift the suspension or restriction of water usage, as deemed appropriate, when evidence of sustained, improved conditions is available.

The department will not impose a suspension of water or a further restriction, other than emergency conservation, on the uses of water provided in paragraphs 52.10(3)"g" through "i" or on uses of water pursuant to a contract with the state as provided in Iowa Code subsections 455B.263(5) and 455B.263(6) unless the governor has issued a proclamation, as described in paragraph 52.10(2)"b". Notwithstanding such proclamation, in the case of water use under a contract with the state pursuant to Iowa Code subsections 455B.263(5) and 455B.263(6) and in effect prior to March 5, 1985, restriction or suspension measures will be limited to emergency conservation.

52.10(2) Triggering events. The department may implement the priority allocation plan following the occurrence of any of the following:

a. Receipt of a petition by a governmental subdivision or 25 persons that the priority allocation plan be implemented due to a substantial local water shortage adversely affecting their water supply.

b. Issuance by the governor of a proclamation of a disaster emergency due to a drought or other event affecting water resources of the state.

c. Determination by the department in conjunction with the office of disaster services of a local crisis which affects availability of water.

d. Receipt of information from a state or federal natural resource, research or climatological agency indicating that a drought of local or state magnitude is imminent. As a general guideline, emergency conservation or priority allocation restrictions will not be imposed on withdrawals from a surface stream or adjacent alluvial aquifer when stream flow is above the seven-day, one-in-ten-year low-flow level.

52.10(3) Priority allocation plan. Notwithstanding a person's possession of a permit or the person's use of water being a nonregulated use, the department may suspend or restrict usage of water by category of use on a local or statewide basis in the following order:

a. Water conveyed across state boundaries.

b. Water used primarily for recreational or aesthetic purposes.

c. Uses of water for the irrigation of hay, corn, soybeans, oats, grain sorghum or wheat.

d. Uses of water for the irrigation of crops other than hay, corn, soybeans, oats, grain sorghum or wheat.

e. Uses of water for manufacturing or other industrial processes.

f. Uses of water for generation of electrical power for public consumption.

g. Uses of water for livestock production.

h. Uses of water for human consumption and sanitation supplied by rural water districts, municipal water systems, or other public water supplies.

i. Uses of water for human consumption and sanitation supplied by a private water supply.

This rule is intended to implement Iowa Code section 455B.266.

Date

Larry J. Wilson, Director

Motion was made by Charlotte Mohr to approve Final Rule--Revisions to Chapters 50, 51 and 52, Water Rights Allocation Rules. Seconded by Donna Hammitt. Motion carried unanimously.

EMERGENCY ADOPTION--AMENDMENTS TO CHAPTER 135, UNDERGROUND STORAGE TANKS

Allan Stokes, Division Administrator, Environmental Protection Division, presented the following item.

Proposed rules for underground storage tanks are attached. It is requested that these rules be adopted on an emergency basis. The changes proposed are required by the Groundwater Protection Act that was recently enacted by the Iowa General Assembly. These amendments address the collection of annual tank management fees, filling tanks that are not registered, and requirements for small residential and farm tanks that previously were exempt from the rules.

**ENVIRONMENTAL PROTECTION COMMISSION [567]
Emergency Adopted and Implemented**

Pursuant to the 1987 Iowa Code supplement section 455B.471 and 455B.479, the Environmental Protection Commission emergency adopts amendments to 567--135(455B), "Underground Storage Tanks," Iowa Administrative Code. These amendments relate to fees for registering underground storage tanks with the state and annual management fees for tanks over eleven hundred gallons in size. The rule also establishes requirements for farm and residential tanks that previously were excluded from the rules. Emergency adoption and immediate implementation is necessary to protect the public health and environment and to meet legislative deadlines for the effectiveness of these rules.

For these reasons, the Environmental Protection Commission finds that, pursuant to Iowa Code section 17A.4(2) and 17A.5(2) that public notice and participation is impracticable and that the normal effective date of this rule should be waived and the rule be made effective upon filing on September 22, 1987.

The Environmental Protection Commission adopted this rule at a regular meeting on September 22, 1987.

This rule implements Iowa Code Chapter 455B.

ITEM 1. Amend 135.3 Notice Requirements as follows:

Modify 135.3(5) by deleting five dollars (\$5) and inserting ten dollars (\$10).

135.3(8) It is unlawful for a person to place a regulated substance in an underground storage tank that has not been registered in accordance with this rule, except that the deposit is allowed one time provided:

- a) The person reports the unregistered tank to the department.
- b) The person provides the owner or operator with a registration form and informs the owner or operator of the registration requirements.

Add "135.3(9) When a supplier or deliverer of a regulated substance reports an unregistered tank to the department, the owner or operator of that tank has fifteen days from the date that the department receives the notice to register the tank with the department. If registration is not received within the fifteen-day period, the registration fee will be twenty-five (\$25) dollars.

ITEM 2. Add 135.4 Farm and residential tanks.

135.4(1) The owner or operator of a farm or residential tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes is subject to the requirements of this rule.

135.4(2) Tanks under this rule installed before July 1, 1987 must report the tank on a notification form by July 1, 1989, but are not required to pay a registration fee.

135.4(3) Tanks under this rule that were installed on or after July 1, 1987 must comply with all the underground storage tank regulations.

ITEM 3. Add 135.5 Registration tags and annual management fee.

135.5(1) Tanks of one thousand one hundred (1,100) gallons or less capacity that have registered with the department will be issued a permanent registration tag.

135.5(2) Tanks that are over one thousand one hundred (1,100) gallons must submit a tank management fee of fifteen dollars (\$15) per tank each year by January 15. The first fee is due on January 15, 1988. A one-year registration tag will then be issued for the period from April 1 to March 31.

135.5(3) The owner or operator shall affix the tag to the fill pipe of the underground storage tank where it will be readily visible.

135.5(4) A person who conveys or deposits a regulated substance shall inspect the underground storage tank to determine the existence or absence of the registration tag. If the tag is not affixed to the fill pipe, the person may not deposit the substance in the tank except as allowed in 135.3(8).

ITEM 4. Revise 135.11 to reflect the effective date as the date of the rule adoption for the new sections.

ITEM 5. Renumber existing sections 135.4 through 135.11.

Date

Larry J. Wilson, Director

Charlotte Mohr asked if staff has any idea of how much revenue would be received from the tank management fees, and if the department will notify individual when the registration fee is due.

Mr. Stokes replied that it is estimated \$450,000 per year will be received.

Director Wilson stated that the Department will send an annual notice when the registration fee is due.

Motion was made by Gary Priebe to approve Emergency Adoption--Amendments to Chapter 135, Underground Storage Tanks Rules. Seconded by Nancy Lee Siebenmann. Motion Carried unanimously.

RULE DECISION--SUBRULE 567--41.4(3)"f"(5)

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

The Commission adopted rule amendments to Chapters 40 and 41 of the water supply rules concerning fluoride in August, 1987. Following this adoption an error was discovered in subrule 41.4(3)"f"(5), which incorrectly referred to subrule 41.4(1). The subrule should have referred to subrule 41.4(11). This emergency adopted and implemented rule corrects this reference and will become effective on October 14, 1987, the same date as the rule amendments adopted in August, 1987.

ENVIRONMENTAL PROTECTION COMMISSION [567]

Emergency Adopted
and Implemented Rule

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission of the Department of Natural Resources emergency adopts and implements subrule 41.4(3)"f"(5) of 567--Chapter 41 Iowa Administrative Code, pertaining to analysis for fluoride in community drinking water systems.

In compliance with Section 17A.4(2) Code of Iowa, the Commission finds that public notice and public participation would be contrary to public interest since the proposed amendment to subrule 41.4(3)"f"(5) corrects an erroneous reference in the subrule to another subrule. It is in the public interest to have the correct subrule reference to inform the public that fluoride analysis must be conducted by a certified laboratory as prescribed in 41.4(11).

The Commission finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rule, 35 days after publication, should be waived and the rule be made effective October 14, 1987, the same effective date as for previous amendments to rules in Chapters 40 and 41 pertaining to analysis for fluoride in community public water supplies. It confers a benefit upon the public to have this subrule effective on the same date as the previously adopted subrules pertaining to fluoride analysis in community drinking water systems.

The Commission adopted this subrule on September 22, 1987.

This subrule is intended to implement Iowa Code Chapter 455B, division III, part I. The subrule will be effective on October 14, 1987.

ITEM 1. Amend subrule 41.4(3)"f"(5) as follows:

(5) Effective October 2, 1987, analysis for fluoride under this subrule shall only be used for determining compliance if conducted by a certified laboratory as prescribed in 41.4(11) that has analyzed Performance Evaluation samples to within $\pm 10\%$ of the reference value at fluoride concentrations from 1.0 mg/l to 10.0 mg/l within the last 12 months.

September 22, 1987

Date

Larry J. Wilson, Director

Motion was made by Nancy Lee Siebenmann to approve Emergency Adoption--Subrule 567--41.4(3)"f"(5), Amendments to Water Supply Rules. Seconded by Gary Priebe. Motion carried unanimously.

PROPOSED CONTESTED CASE DECISION--CITY OF LONG GROVE

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

The City of Long Grove, Iowa, submitted a plan of action under the Municipal Improvement Program to the Department for its wastewater treatment facility. The plan requested that the proposed aerated lagoon system be operated in a fill and draw mode of operation rather than in the continuous discharge mode of operation which is the normal mode of operation for this type of lagoon system. The request for use of the fill and draw mode of operation was considered by the Department to be a request for a variance by the City and was denied by the Department.

An appeal was filed on behalf of the City and a contested case hearing was held on July 15, 1987. Following the submission of briefs by the parties, the Hearing Officer issued the attached proposed decision on September 9, 1987. The decision affirmed the Department's denial of the City's variance request to use the fill and draw mode of operation for its upgraded aerated lagoon system.

An appeal may be filed by the City pursuant to department rules. In the absence of an appeal, the Commission may decide on its own motion to review the proposed decision. If there is no appeal by the City or review of the proposed decision by the Commission on its own motion, the decision automatically becomes the final decision of the Commission.

The Commission took no action on this which has the effect of upholding the hearing officer's decision unless there is an appeal.

CONTRACT APPROVAL -- VOGEL PAINT

James Combs, Division Administrator, Coordination and Information Division, presented the following item.

Commission approval of the attached contract is requested. A consent order with Vogel Paint and Wax Co., Inc. calls for reimbursement to the department for certain of its costs in connection with the Vogel Paint site cleanup. Cleanup is proceeding as planned.

VOGEL PAINT & WAX CO., INC.
AND
IOWA DEPARTMENT OF NATURAL RESOURCES
CONTRACT FOR REIMBURSED STATE COSTS

I. Authority

The Department pursuant to Iowa Code section 455B.384(1) is authorized to provide technical advice and assistance to Vogel Paint & Wax Company for the control, abatement and prevention of the hazardous condition which is determined to exist on property located in the NW 1/4 of Section 29, T94N, R45W, Sioux County, Iowa. Vogel Paint in accordance with Iowa Code section 455B.392 is liable to the state for the reasonable cleanup costs incurred by the state as a result of the clean up of hazardous substances on property described above.

II. Purpose

By this contract Vogel Paint is to pay for the reasonable response and oversight costs incurred by the Iowa Department of Natural Resources which activities are required to implement and enforce Consent Order No. 87-SW-16.

III. Parties

The contract is between Vogel Paint and the Iowa Department of Natural Resources.

IV. Project Activities and Costs

- A. The Department agrees to conduct the following oversight and response activities and Vogel Paint agrees to reimburse the Department in accordance with the following estimated schedule:

| | |
|---|-----------------|
| Direct Oversight Cost (860 hours) x (\$20/hr) | \$17,600 |
| Indirect Cost (25%) | 4,400 |
| Travel Cost for Community Relations and Project Oversight subject to state maximum daily travel limitations | 270 |
| Sample Analysis (10 samples @ \$500/sample) | 5,000 |
| Public Notices (3 notices @ \$25/notice) | 75 |
| TOTAL | \$27,345 |

- B. The completion of work described in Consent Order No. 87-SW-16 shall be assessed on a quarterly basis. At the end of each quarter the Department shall determine the cost of the Department's activities during the quarter, if any, and shall notify Vogel. Payments to the Department for these activities shall be made within 30 days of receipt of the accounting.

- C. Payment shall be made to the "Department of Natural Resources - Hazardous Waste Remedial Fund" and shall be sent to:

Department of Natural Resources
Henry A. Wallace Building
900 East Grand Avenue
Des Moines, IA 50322

- D. Vogel Paint retains the right to dispute the propriety of the costs assessed by the Department. Within 30 days of receipt of the accounting by Vogel Paint, Vogel Paint shall notify the Department of its dispute which shall include an itemization of the project activities and associated costs and the reasons for the dispute of each item.

Within 15 days of receipt of the disputed costs, the Department shall confer with Vogel Paint in an attempt to achieve agreement.

If an agreement can be achieved by such conference the Department shall submit a revised accounting to Vogel Paint and payment shall be made in accordance with paragraph III.B.

If agreement concerning the disputed costs can not be achieved the director of the Department shall determine the appropriate remedy which the Department shall pursue. The Department and Vogel Paint shall be provided an opportunity, prior to the decision of the Director, to present oral or written arguments to the Director. Reasonable notice of the date and time of consideration by the Director shall be provided.

- E. None of the foregoing provisions shall prohibit any party from pursuing appropriate judicial or other remedies as provided by law on the disputed portions of an accounting.

IV. Period of Performance

This contract shall be effective upon the signatures by both parties. It will terminate upon fulfillment by both parties of all responsibilities outlined in this contract.

V. Amendments

Any change to this contract must be agreed to, in writing, by both parties.

LARRY WILSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

Vogel Paint & Wax Co., Inc.

Date

Date

Keith Uhl asked if the state is protected from liability for negligent oversight.

James Combs stated that the state is immune from liability the same as EPA.

Motion was made by Charlotte Mohr to approve the contract with Vogel Paint, in the amount of \$27,345, for reimbursement of our costs in oversight of their clean-up activities. Seconded by Donna Hammitt. Motion carried unanimously.

MEETING REPORT ON "THE ROLE OF HAZARDOUS WASTE CLEANUP IN PROTECTING HUMAN HEALTH"

Nancy Lee Siebenmann reported that this was the inaugural event of the Center for the Health Effects of Environmental Contamination at the University of

Iowa. She stated that a speech was given by J. Winston Porter, Programming Manager for the Superfund. Commissioner Siebenmann reported in detail on the following topics covered in Mr. Porter's speech: deletion of sites; points to look at in selection of a remedy when a violation is reported; Title 3 emergency protection and reporting regulations; 950 sites on national priority list; RCRA legislation since 1984; regulatory issues; underground storage tanks and need of secondary containment for chemical tanks only; enforcement; landfills and performance standards; and mixed funding from private and government channels.

Commissioner Siebenmann stated that Mr. Porter stressed the need for a strong partnership with state and local agencies.

Commissioner Siebenmann stated that Mr. Porter was given a plaque for being the first speaker at the Center for Health Effects of Environmental Contamination. She added that Dr. Peter Isaacson, with the University of Iowa staff, is the acting director for the new Center.

ADDRESS ITEMS FOR NEXT MEETING

1. Preliminary report from staff on state's exposure on ^{Iron} Graybar clean-up (Marshalltown).
2. Progress report on Des Moines Metro Landfill hearing.

PUBLIC PARTICIPATION

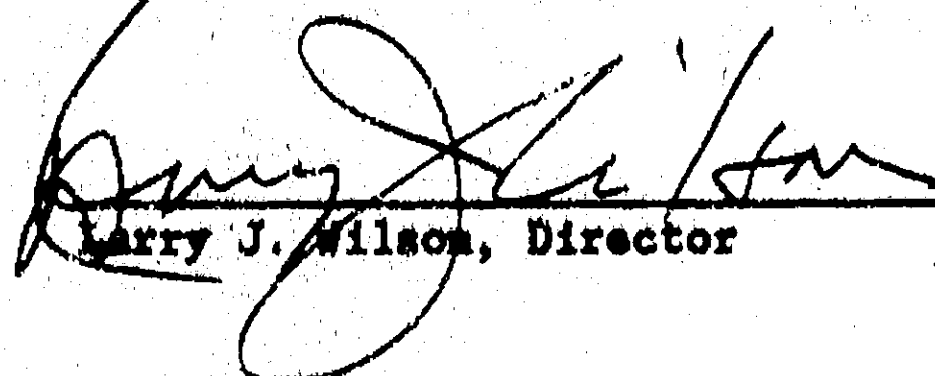
Chairman Schlutz announced public participation at 10:30 a.m.; no one requested to speak.

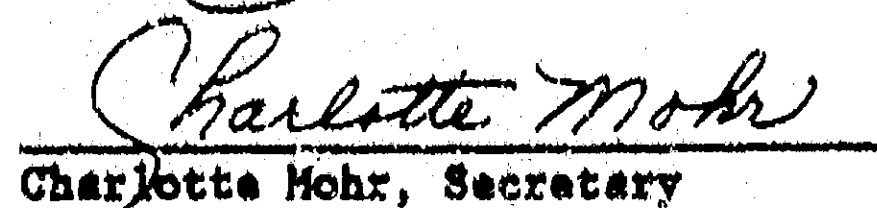
NEXT MEETING DATES

November 16-17, 1987
December 21-22, 1987
January 18-19, 1988

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairman Schlutz adjourned the meeting at 10:30 a.m., Tuesday, September 22, 1987.


Larry J. Wilson, Director


Charlotte Mohr, Secretary

ADM-1-1-1
September 1987

MEETING AGENDA
ENVIRONMENTAL PROTECTION COMMISSION
WALLACE STATE OFFICE BUILDING
September 21-22, 1987

Meeting Convenes at 1:30 p.m., September 21, 1987, 4th floor conference room and reconvenes on September 22, 8:30 a.m.

Break 2:45 p.m.

Appointment:

City of Garner 3:00 p.m.

Rodney Vlieger, Hickok 4:00 p.m.

Meeting Reconvenes 8:30 a.m. September 22

Appointment:

Warner Livestock 8:30 a.m.

Break 10:00 a.m.

Public Participation 10:30 a.m.

1. Approval of Agenda.
2. Approval of Minutes of July 20-21, 1987 and August 19-20, 1987.
3. Director's Report. (Wilson) Informational.
4. Groundwater Budget, FY88, FY89, & FY90. (Kuhn) Informational.
5. Monthly Reports. (Stokes) Informational.
6. Litigation Update. (Sarcone) Informational.
7. Referrals to Attorney General's Office. (Combs) Decision.
8. Emergency Adoption--Amendments to Chapter 20.2, Air Quality Rules. (Stokes) Decision.
9. Notice of Intended Action--Chapter 23, Amendments to New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants. (Stokes) Informational.
10. Proposed Amendments to Chapter 100, Scope of Title-Definitions-Forms-Rules of Practice, and Chapter 102, Permits. (Stokes) Informational.
11. Final Rule--Revisions to Chapters 50, 51 and 52, Water Rights Allocation Rules. (Stokes) Decision.
12. Emergency Adoption--Amendments to Chapter 135, Underground Storage Tanks. (Stokes) Decision.

Page

13. Underground Storage Tank Task Force. (Timmerman) Informational.
14. Proposed Legislation. (Uhl) Informational.
15. Meeting report on "The Role of Hazardous Waste Cleanup in Protecting Human Health". (Siebenmann) Informational.
16. Address Items for Next Meeting. (Combs) Informational
17. Contract Approval - Vogel Paint (Combs) Decision
18. Rule Decision - Subrule 567-41.4 (2) F (5), Water Supply Rules Concerning Fluoride (Combs) Decision
19. Proposed Contested Case Decision -- City of Long Grove. (Combs) Informational.

NEXT MEETING DATES

October 19-20, 1987

November 16-17, 1987

December 21-22, 1987

ENVIRONMENTAL PROTECTION COMMISSION

NAME

COMPANY OR AGENCY

CITY

(Please print)

| | | |
|-------------------|---------------------------------------|------------|
| JACK SORNER | IA Assoc Business & Industry | D.M. |
| TIM ROLLINGER | Iowa Public Service | Sauk City |
| Marjorie Dennison | Cedar Rapids Gazette | DM Bureau |
| Don Jensen | Corn Belt Power | Humboldt |
| Frank Weaver | Iowa Power | |
| E. Kistner | Petroleum Marketers of Ia. | D.M. |
| Ivan D. Dora | Mayor City of Garner | |
| TOM PRONK | City Atty. - Garner | |
| Gary Sindelar | Kirkham, Michael - Garner Eng. - D.M. | |
| Les Eichen | Councilman | Garner |
| Don Jones | UPI | Des Moines |
| Wayne Johnson | UPI | |
| Julie Ratz | Deere & Co. | Moline |
| Mike McQuinn | | |
| NICK GRIMM | HOWARD | CRESO |

ENVIRONMENTAL PROTECTION COMMISSION

ITEM

5

INFORMATIONAL

MONTHLY REPORTS

The following monthly reports are enclosed with the agenda for the Commission's information.

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Enforcement Status Report
5. Contested Case Status Report

Members of the department will be present to expand upon these reports and answer questions.

Allan Stokes
September 9, 1987

**U.S. DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
REGULATIONS STATUS REPORT
SEPTEMBER 1, 1967**

| PROPOSAL | DRAFT TO COMMISSION | NOTICE PUBLISHED | RULES REVIEW COMMITTEE | HEARINGS | SUMMARY OF COMMENTS & RECOMMENDATIONS TO COMMISSION | RULES ADOPTED | RULES PUBLISHED | RULES EFFECTIVE |
|--|---------------------|------------------|------------------------|----------------------------------|---|---------------|-----------------|--------------------|
| 1. Ch. 20 - Emission Standard | 9/22/67 | — | — | — | 9/22/67 | 9/22/67 | 10/21/67 | 10/22/67 |
| 2. Ch. 23 - SO ₂ | 5/20/67 | 6/17/67 | 7/10/67 | 7/10/67 7/10/67 7/10/67 | 8/20/67 | 8/20/67 | 9/19/67 | 10/14/67 |
| 3. Ch. 23 - NPS & NEMAPS | 9/22/67 | 10/21/67 | — | 11/10/67 | — | — | — | — |
| 4. Ch. 40, 41 - Fluoride MEL | 5/20/67 | 6/17/67 | 7/10/67 | 7/10/67 7/10/67 7/10/67 | 8/20/67 | 8/22/67 | 9/19/67 | 10/14/67 |
| 5. Ch. 50, 51 - Air Drainage Wells | 9/22/67 | — | — | — | 9/22/67 | 9/22/67 | 10/21/67 | 10/22/67 |
| 6. Ch. 50 - 52 Water Allocation (Conservation) | 5/20/67 | 6/17/67 | 7/10/67 | 7/10/67 7/10/67 7/10/67 | 9/22/67 | 9/22/67 | 10/21/67 | 11/12/67 |
| 7. Ch. 100, 102 - Liquids in Landfills | 9/22/67 | — | — | — | — | — | — | — |
| 8. Ch. 100, 103 - Landfill Ground Water Monitoring | 2/16/67 | 5/20/67 | 6/10/67 | 6/10/67 6/10/67 6/11/67 | — | — | — | — |
| 9. Ch. 135 - Underground Tank Monitoring | 12/15/66 | 1/14/67 | 2/10/67 6/10/67 | 2/10/67 2/10/67 2/10/67 | 4/21/67 | 4/21/67 | 5/20/67 | Delayed 9/23/67 |
| 10. Ch. 135 - Tank Registration | 9/22/67 | — | — | — | 9/22/67 | 9/22/67 | 10/21/67 | 10/22/67 |
| 11. Ch. 135 - Spillout Well Criteria | 9/22/67 | — | — | — | — | — | — | — |
| 12. Ch. 143 - Boat Oil | 6/17/67 | 8/12/67 | — | 9/10/67 9/10/67 9/10/67 | — | — | — | — |
| 13. Ch. 152 - Criteria for Siting Low-Level Radioactive Waste Facilities | 8/19/67 | 9/19/67 | — | 10/11/67 10/12/67 10/16/67 | — | — | — | — |

Projected

E:RPS/CI-1251203.FBI

MONTHLY VARIANCE REPORT

08/31/87

| No. Facility | Program | Engineer | Subject | Decision | Date |
|---------------------------|---------------------|-----------------------|-----------------------|----------|----------|
| 1 Ottumwa, City of-AirCon | Air Quality | | Structures | denied | 08/31/87 |
| 2 Albia, City of | Wastewater Const. | Garden & Associates | Minimum Sewer Size | approved | 08/03/87 |
| 3 Clarinda, City of | Wastewater Const. | Midland Engineering | Sewer Grade | approved | 08/05/87 |
| 4 Washington, City of | Wastewater Const. | City Engr. Washington | Unit Bypassing | approved | 08/14/87 |
| 5 Van Brest Sup-Dev. City | Wastewater Const. | Clapsaddle-Barber | Embankments and Dikes | approved | 08/26/87 |
| 6 Rock Valley, City of | Water supply Const. | Man. Engineering | Siting Criteria | denied | 08/21/87 |

REPORTS OF HAZARDOUS CONDITIONS

During the period of August 1, 1987 through August 31, 1987, reports of 65 hazardous conditions were forwarded to the Central Office. Two incidents are highlighted, followed by a general summary and the number per field office.

| <u>Date Reported and County</u> | <u>Description: Material, Amount, Date of Incident, Cause, Location, Impact</u> | <u>Responsible Party</u> | <u>Response and Corrective Actions</u> |
|-------------------------------------|--|---|---|
| 8/07/87 SCOTT | Fuel oil was being leveled in two tanks when an employee forgot to turn off a transfer pump. About 375 gallons of product overflowed through the vent pipes of the cooling tower and spilled on the ground at 1227 East Rusholme Street in Davenport, Iowa on August 7, 1987. | St. Luke's Hospital 1227 E. Rusholme St. Davenport, IA 52803 | Contaminated soil was excavated, applied on land at a thickness no greater than four inches, and disked to provide for aeration. The excavated area was backfilled with clean sand and rock. High level alarms are being installed to prevent future accidents. |
| 8/20/87 | A one-quarter-inch pipe on a water separator container was placed into the side outlet of a two-inch drain pipe "T" fitting and the valve on the return line to the tank from the separator was closed. This caused the level of 1,1,1 trichloroethane in the separator to reach the overflow pipe level, and about 100 gallons ran into the drain line and storm sewer at 601 East Central in Jefferson, Iowa on July 29, 1987. | White Consolidated Industries, Inc., 601 East Central, Jefferson, IA 50129 | The valve to the return line was placed in an open position and secured. The side outlet of the two-inch "T" fitting was permanently plugged and the one-quarter-inch line was routed to the catch pan directly below the separator. |

Numbers in Parentheses Represent Reports for the Same Period in Fiscal Year 1986

| Month | Substance Type | | | | | | Mode | | | |
|-------|----------------------|-------------------|----------------|--------------------------------|----------------------|----------|------------------|-------------|------|-------|
| | Total # of Incidents | Petroleum Product | Agri. Chemical | Other Chemicals and Substances | Handling and Storage | Pipeline | Highway Incident | RR Incident | Fire | Other |
| Oct | 79 | 45 | 0 | 34 | 53 | 0 | 18 | 2 | 0 | 6 |
| Nov | 24 | 12 | 3 | 9 | 17 | 0 | 5 | 1 | 0 | 1 |
| Dec | 43 | 36 | 1 | 6 | 24 | 1 | 14 | 1 | 0 | 3 |
| Jan | 48 | 32 | 3 | 13 | 37 | 0 | 9 | 0 | 1 | 1 |
| Feb | 41 | 25 | 1 | 15 | 30 | 1 | 5 | 1 | 2 | 2 |
| Mar | 55 | 35 | 5 | 15 | 37 | 0 | 12 | 4 | 1 | 1 |
| Apr | 78 | 32 | 25 | 21 | 51 | 3 | 16 | 3 | 2 | 3 |
| May | 74 | 24 | 29 | 23 | 39 | 0 | 24 | 2 | 6 | 3 |
| Jun | 73 | 34 | 11 | 28 | 47 | 1 | 14 | 1 | 2 | 8 |
| Jul | 74 | 26 | 10 | 38 | 50 | 1 | 13 | 3 | 1 | 6 |
| Aug | 65(34) | 30(20) UST-18 | 5(1) | 30(13) UST-1 | 49(25) UST-19 | 0(0) | 9(2) | 1(3) | 1(0) | 5(4) |

Total # of Incidents Per
 Field Office 01 02 03 04 05 06
 This Period 7 6 4 11 21 16

kxp/ERU216P01.01

DATE: September 2, 1987
 TO: EPC
 FROM: Mike Murphy
 SUBJECT: Enforcement Report Update

The following new enforcement actions were taken last month:

| Name, Location and Field Office Number | Program | Alleged Violation | Action | Date |
|---|----------------|---|---------------|---------|
| City of Wapello (6) | Wastewater | Municipal improvement plan | Order/Penalty | 7/30/87 |
| City of Newell (3) | Wastewater | Municipal improvement plan | Order/Penalty | 7/30/87 |
| City of Elkhart (5) | Wastewater | Effluent discharge | Order/Penalty | 8/11/87 |
| City of Callender (2) | Wastewater | Bypassing | Order/Penalty | 8/11/87 |
| City of Iowa City (6) | Wastewater | Municipal improvement plan | Order/ | 8/11/87 |
| City of Mt. Vernon (1) | Wastewater | Monitoring & reporting Treatment violations | Order/Penalty | 8/11/87 |
| Timberline Assoc. Ltd. Partnership W. Burlington (6) | Drinking Water | Radioactivity MCL | Order/Penalty | 8/24/87 |
| Twelve Mile House Bernard (1) | Drinking Water | Failure to monitor bacteria and nitrate | Order/Penalty | 8/24/87 |
| Accent Lawn and Leisure Mt. Joy (6) | Air Quality | Open burning | Order/Penalty | 8/28/87 |
| Gradert, Ernest and Kevin Sibley (3) | Air Quality | Open burning | Order/Penalty | 8/28/87 |
| Ottumwa-Wapello County SLF (6) | Solid Waste | Permit violations | Order/Penalty | 8/31/87 |

MM:bsg/CIM244L02.01

M E M O R A N D U M

DATE: September 1, 1987

TO: Environmental Protection Commission

FROM: Mike Murphy

SUBJECT: Summary of Administrative Penalties

The following administrative penalties are due:

| <u>NAME/LOCATION</u> | <u>AMOUNT</u> | <u>DUE DATE</u> |
|--|---------------|-----------------|
| *Shelter Shield (Buffalo Center) | \$1,000 | 12-03-86 |
| *Lawrence Payne (Ottumwa) | 700 | 12-05-86 |
| *Cedar Hills Apartments (Dubuque) | 1,000 | 12-29-86 |
| *Chico's Supper Club (Burr Oak) | 863 | 2-10-87 |
| *City of Dysart | 400 | 3-13-87 |
| *OK Lounge (Marion) | 448 | 3-29-87 |
| *Rhinehart Construction Co. (N. Dallas SLF) | 800 | 5-15-87 |
| Giase Construction Co. (Eagle Grove) | 1,000 | 5-25-87 |
| City of Swan | 530 | 7-01-87 |
| Elings/Catron/Frey (Des Moines) | 1,000 | 7-18-87 |
| Country Corner Cafe (Pacific Junction) | 451 | 8-05-87 |
| JTM Indust./MacDade/Leamer (Pleasant Valley) | 1,000 | 8-12-87 |
| Glen Mark Subdivision (Burlington) | 436 | 8-19-87 |
| Wilson/Pingel (Fort Dodge) | 500 | 8-19-87 |
| The Moore Oil Co. (West Branch) | 50 | 8-24-87 |
| Orrie's Supper Club (Hudson) | 100 | 8-31-87 |
| **K & K Truckstop (Lenox) | 112 | 9-01-87 |
| **Ken Turner (Fort Madison) | 150 | 9-15-87 |
| City of Ireton | 500 | 9-06-87 |
| Mt. Vernon Steel and Wire | 1,000 | 9-12-87 |
| Big Rock Top | 660 | 9-21-87 |
| Bremer Utilities | 262 | 9-21-87 |
| City of Dixon | 200 | 9-27-87 |
| Linwood Mining (Davenport) | 1,000 | 9-27-87 |
| City of Elkhart | 1,000 | 10-10-87 |
| City of Mt. Vernon | 1,000 | 10-12-87 |
| Timberline Assoc. Ltd (W. Burlington) | 1,000 | ---- |
| Twelve Mile House (Bernard) | 339 | ---- |
| Accent Lawn and Leisure (Mt. Joy) | 1,000 | ---- |
| Gradert, Ernest and Kevin (Sibley) | 500 | ---- |
| Ottumwa-Wapello County SLF | 1,000 | ---- |

* Referred to the Attorney General

** On Payment Schedule

MPM:rag/I122N01.01

The following administrative penalties have been appealed:

| <u>NAME/LOCATION</u> | <u>AMOUNT</u> |
|--|---------------|
| Kula and Boge (Martelle) | \$1,000 |
| Handi-Klasp, Inc. (Webster City) | 1,000 |
| Munn and Traum (Davenport) | 100 |
| Scotty's Auction Service (Davenport) | 100 |
| Des Moines Metro SLP | 1,000 |
| Iowa City Regency HHP | 1,000 |
| Bianchi Meyrat Lagoon (Des Moines) | 600 |
| Thomas E. Lennon (Barnum) | 700 |
| Trausch Co., Inc. (Carroll) | 1,000 |
| Trausch Co., Inc. (Carroll) | 1,000 |
| The Bank (Turin) | 212 |
| McFedries (Davenport) | 1,000 |
| City of Inwood | 400 |
| Clarion Farmer's Coop | 750 |
| Great Rivers Coop (Atavia) | 1,000 |
| Poweshiek Rural Water | 500 |
| Rich Metals (Davenport) | 1,000 |
| Village Oaks Homeowners Ass'n (Blue Grass) | 424 |
| City of Wapello | 500 |
| City of Newell | 500 |

The following administrative penalties were paid in August:

| <u>NAME/LOCATION</u> | <u>AMOUNT</u> |
|--|---------------|
| **K & K Trucking (Lenox) | \$ 50 |
| Frederika Tap (Frederika) | 50 |
| City of Shenandoah | 500 |
| Golden Slipper (Dunlap) | 250 |
| City of Toledo | 250 |
| Osage River City Egg (Mason City) | 500 |
| Lloyd Matthews (Allamakee Co.) | 500 |
| New Hampton Farmers Coop | 1,000 |
| Kountry Manor (Garnaville) | 312 |
| Squaw Valley Sub. (Ames) | 212 |
| Trausch Co., Inc. (Carroll) | 275 |
| Cattlemen's Steak & Provisions (Belmond) | 50 |
| River Road Golf Club (Algona) | 274 |
| **Ken Turner | 50 |
| City of Callendar | 600 |

Penalties were rescinded for Larsen/O'Donnell (Humboldt) and The Bank (Turin).

* Referred to the Attorney General
 ** On Payment Schedule

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL MEMORANDUM
SEPTEMBER 1, 1987

| Name, Location and Region Number | Most or Updated | Program | Alleged Violation | DNR Action | Status | Date |
|---|--------------------|--------------------|---|---------------------------------|--|---------------------------------|
| Aiken Corporation Conacill Bluffs (4) | | Hazardous Waste | Release of Hazardous Substances | Referred to Attorney General | Referred EPA suit filed State intervention | 12/16/82 2/26/87 3/05/87 |
| Boyer Valley Company Derision (4) | | Wastewater | Prohibited Discharge | Referred to Attorney General | Referred Consent Decree Noncompliance | 10/27/86 12/15/86 2/17/87 |
| Bozarth and Bell, Inc. Davenport (6) | | Solid Waste | Open Dumping | Order | Referred Suit Filed Default Judgment \$7500 | 2/20/87 4/23/87 6/22/87 |
| Bryant, Robert E. Cherokee (3) | | Wastewater | Prohibited Discharge | Order | Referred Suit Filed Bankruptcy Proceedings | 6/01/86 9/08/86 |
| Cedar Hills Apts. Debuque (1) | | Water Supply | Monitoring; Operating without permit | Order/Penalty | Referred Suit filed | 2/20/87 4/27/87 |
| Chico's Supper Club Pt. Madison (6) | | Water Supply | Monitoring; Operating without permit | Order/Penalty | Referred Suit Filed | 3/20/87 4/14/87 |
| Dyart, City of (5) | | Wastewater | Compliance Schedule | Order/Penalty | Referred | 5/23/87 |
| Eilers, Dwayne Waterloo (1) | | Flood Plain | Unauthorized Fill | Referred to Attorney General | Referred Suit Filed Default Judgment Bankruptcy | 6/19/84 11/01/85 1/12/87 |
| Flynn, Robert Iscota (6) | | Flood Plain | Channel Change | Order | Referred | 5/21/87 |
| Hickory Grove MHP Janes (5) | | Drinking Water | Failure to Monitor | Order | Referred Bankruptcy Case | 5/21/87 |
| Hill Top Feed Yards, Inc. Pottawattamie County (4) | | Wastewater | Feedlot Lagoon Discharge | Order | Referred Suit Filed | 9/16/85 1/23/86 |

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL MEMORANDUM
SEPTEMBER 1, 1987**

| Case, Location and Region Number | New or Updated | Program | Alleged Violation | DER Action | Status | Date |
|--|-------------------|----------------|---|---------------------------------|---|---|
| Jetter Sealing Service Clinton (6) | Updated | Solid Waste | Unpermitted Operation | Order | Referred Suit Filed Consent Decree \$2500 | 4/20/87 6/27/87 8/07/87 |
| Jungling Farms, Inc. Butler County (2) | | Wastewater | Prohibited Discharge | Order | Referred Suit Filed | 7/21/86 1/31/87 |
| Kellogg, City of (5) | Updated | Wastewater | Compliance Schedule | Order/Penalty | Referred Consent Decree | 5/21/87 8/ /87 |
| King, James & Julia | New | Flood Plain | Channel Change | Order | Referred | 8/20/87 |
| OK Lounge Marion (1) | Updated | Drinking Water | Failure to Monitor | Order | Referred Suit Filed | 6/29/87 7/29/87 |
| Outside Inn Et. Madison (6) | Updated | Drinking Water | Failure to Monitor | Order | Referred Consent Decree \$500 | 5/21/87 7/ /87 |
| Parlier, A.J. Disposal (4) | | Solid Waste | Operation Violations at Permitted Site | Order | Referred Injunction Issued Compliance Date | 3/21/79 2/28/80 5/21/81 |
| Payne, Lawrence Ottawa (6) | Updated | Solid Waste | Open Dumping | Order/Penalty | Referred Suit Filed Consent Decree | 2/20/87 4/23/87 8/ /87 |
| Pestier Derby Oil Company Davenport (6) | | Wastewater | Prohibited Discharge | Referred to Attorney General | Petition Filed Judgment Assessed Cleanup Plan Approved | 3/ /83 10/12/84 10/24/84 1/27/86 |
| Poppenhiller, William et. al. Washington County (6) | Updated | Flood Plain | Channel Change | Referred to Attorney General | Referred Suit Filed | 3/20/87 6/25/87 |
| Rinehart Construction Co. Dallas County (5) | New | Solid Waste | Penalty Nonpayment | Order | Referred | 8/20/87 |

**DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
ATTORNEY GENERAL REFERRALS
SEPTEMBER 1, 1987**

| Name, Location and Region Number | New or Updated | Program | Alleged Violation | DNR Action | Status | Date |
|---|-------------------|--------------------|--|--|---|--|
| Salisbury, Ronald, Presto-X Des Moines (5) | | Hazardous Waste | Treatment and Storage Violations | Referred to Attorney General | Referred Judgment Appealed to Sup. Court Briefs Filed | 9/18/84 5/86 7/86 10/86 |
| Shelter Shield Buffalo Center (6) | | Air Quality | Excess Emissions: Construction w/o permit Order/Penalty | | Referred Suit Filed | 2/20/87 6/30/87 |
| Wisconsin Barge Service Clinton (6) | | Hastewater | Prohibited Discharge | Referred to Attorney General | Referred Suit Filed | 11/20/85 7/86 |
| Hollomon, Robert C. Buena Vista and Cherokee Counties (3) | Updated | Wastewater | Prohibited Discharge | Order | Referred Hearing Consent Decree Contempt Finding Contempt Finding Contempt Finding | 11/27/84 4/22/85 4/25/85 7/02/85 9/25/86 8/24/87 |
| Woodland Park Jones County (1) | | Hastewater | Prohibited Discharge | Order | Referred Suit Filed Temporary Injunction | 7/31/86 11/19/86 2/13/87 |
| Woodside Mobile Home Estates Mount Pleasant (6) | | Drinking water | Failure to Monitor | Order | Referred Suit Filed | 5/31/85 1/24/86 |
| Yocum, Max Johnson (6) | Updated | Flood Plain | Prohibited Construction | Defending Referred to Attorney General | Suit Filed Motion to Dismiss Denied Referred Counter Claim Filed Trial Held Judgment for Department | 12/18/84 3/06/85 8/07/85 7/12/85 10/85 6/16/87 8/18/87 |

DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION
CONTESTED CASES
SEPTEMBER, 1987

| DATE RECEIVED | NAME OF CASE | ACTION APPEALED | PROGRAM | ASSIGNED TO | STATUS |
|--------------------|--------------------------------------|----------------------|-------------|-------------|---|
| 9-14-86 | Bellwood, et. al. | Administrative Order | MC | Landa | Appeal withdrawn 8-21-87. |
| 10-17-86 | City of Burlington | Administrative Order | NH | Nansen | Hearing continued. |
| 1-23-86 | Delucia Soil Service | Administrative Order | NH | Landa | Hearing continued; cleanup study progressing. |
| 6-12-86 | AMM - Clinton | Administrative Order | Air | Landa | Hearing continued. |
| 9-18-86 | Kula and Bogo | Administrative Order | SM | Landa | Negotiating before filing. Removal started. |
| 10-27-86 | Union County/Wittstock | Permit Issuance | FP | Clark | Remanded by District Court. |
| 10-28-86 | Lansel Municipal Utilities | Administrative Order | NH | Nansen | Settled. |
| 11-29-86 | Mead's-Klump Company, Inc. | Administrative Order | AQ/MC/SM | Landa | Motion to schedule hearing, 8-24-87. |
| 11-14-86 | Gule Coated | Permit Condition | FP | Clark | Proposed decision 6-18-87. |
| 12-03-86 | City of Nankoe | Administrative Order | MS | Nansen | Hearing continued. |
| 12-11-86 | Eloise Neese | Permit Condition | FP | Clark | Hearing set for 11-17-87. |
| 12-24-86 | Francis Memberlin | Administrative Order | FP | Clark | Hearing continued. |
| 2- -87 | Aspro, Inc. | Administrative Order | AQ | Landa | Settled. |
| 3-16-87 | Deere and Company | Administrative Order | NH | Murphy | Settled. |
| 3-18-87 | Greiner | Administrative Order | FP | Clark | Hearing held 6-30-87. |
| 3-19-87 | City of Mt. Pleasant | Administrative Order | NH | Nansen | Settled. |
| 3-25-87 | City of Long Grove | Design Denial | MS | Nansen | Hearing held 7-15-87. |
| 3-25-87 | Trum and Mann | Administrative Order | SM | Kennedy | Negotiating before filing. |
| 4-06-87 7-16-87 | Scotty's Auction Service | Administrative Order | SM AQ | Kennedy | New case. |
| 5-06-87 | Des Moines Metro SLF | Administrative Order | SM | Kennedy | Proposed decision 8-8-87; EPC review. |
| 5-12-87 | Iowa City Regency MRP | Administrative Order | NH | Nansen | Hearing set for 9-17-87; prehearing 9-8-87. |
| 5-28-87 | Birchall-Hoyrat Lagoona (Mark Smith) | Administrative Order | NH | Kennedy | Hearing set for 11-4-87. |
| 6-05-87 7-28-87 | Trench Company, Inc. | Administrative Order | AQ/MC SM | Landa | AQ settled; negotiating on others. |

DEPARTMENT OF NATURAL RESOURCES
 ENVIRONMENTAL PROTECTION AND CONSTRUCTION
 CONTINUED CASES
 SEPTEMBER, 1967

| DATE RECEIVED | NAME OF CASE | ACTION APPEALED | PROGRAM | ASSIGNED TO | STATUS |
|---------------|-------------------------------------|----------------------|---------|-------------|--------------------------|
| 6-11-67 | Thomas Lannon | Administrative Order | FP | Clark | Hearing set 10-12-67. |
| 6-15-67 | Robert O'Donnell | Administrative Order | SM | Kennedy | Settled. |
| 7-30-67 | City of Inwood | Administrative Order | MS | Mason | Hearing set for 10-6-67. |
| 8-5-67 | Cattlemen's Meat & Provisions, Ltd. | Administrative Order | MS | Murphy | New case; settled. |
| 8-16-67 | Great Rivers Co-op | Administrative Order | MC | Landa | New case. |
| 8-17-67 | City of Napello | Administrative Order | MM | Mason | New case. |
| 8-17-67 | City of Newellton | Administrative Order | MS | Mason | New case. |
| 8-24-67 | Rich Metals Co. | Administrative Order | MS | Landa | New case. |
| 8-27-67 | Village Oaks Homeowners Assn. | Administrative Order | MS | Murphy | New case. |

ENVIRONMENTAL PROTECTION COMMISSION

Item 4

Informational

Groundwater Budget, FY88, FY89 & FY90

Attached is an outline of the Groundwater bill budget. H.F. 631 sets up a separate Groundwater fund. Within this fund are five accounts: (1) Oil Overcharge Account, (2) Agricultural Management Account, (3) Solid Waste Account, (4) Storage Tank Management Account, and (5) the Household Hazardous Waste Account. The receipts to each account and the expenditures from each account are shown as mandated by H.F. 631.

Many of the receipt estimates are based on limited data, and it may be necessary to make significant changes as we receive better information. The expenditures are outlined as mandated in the bill. For the most part, the DNR has little discretion among the various expenditure purposes appropriated in each account.

The staff estimates that it will be necessary to add approximately 56 positions during FY88 and an additional ten positions in FY89 to implement the provisions of the Groundwater protection bill. Most of these positions will be added to the Environmental Protection division and the Geological Survey bureau. Other positions will be added to the Coordination and Information division and to the Administrative Services division.

Stan Kuhn

IOWA DEPARTMENT OF NATURAL RESOURCES
OIL OVERCHARGE ACCOUNT, GROUND WATER PROTECTION
Budget, FY88, FY89 & FY90

| Source of Funds | FY88 | FY89 | FY90 |
|---|-----------|-----------|-----------|
| Appropriations from Oil Overcharge Settlements | 5,500,000 | 4,000,000 | 3,000,000 |
| Uses of Funds | | | |
| To DNR for all of the following: | | | |
| 1. Groundwater monitoring network | | | |
| 2. Contaminant report | | | |
| 3. Non-regulated contaminant report | | | |
| 4. Groundwater hazard mapping | | | |
| 5. Groundwater quality information and data dissemination | | | |
| 6. Geographic information data system & water resource data system | | | |
| 7. Groundwater program evaluation | | | |
| 8. Investigatory and enforcement action | | | |
| 9. Groundwater data dissemination | | | |
| (All Purposes) | 860,000 | 650,000 | 600,000 |
| To DNR for assessing rural, private water supply water quality | 560,000 | -- | -- |
| To DNR for admin. of GW monitoring program at landfills | 100,000 | 100,000 | -- |
| To DNR to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs | 760,000 | 850,000 | -- |
| To IWSWRI for grants regarding alternative disposal methods and GW protection | 120,000 | 100,000 | 100,000 |
| To the Leopold Center | 800,000 | -- | -- |
| To DALS for the AEMF to improve farm mngt practices relative GW purposes | 1,500,000 | 1,500,000 | 1,500,000 |
| To DNR for the Big Springs project | 700,000 | 700,000 | 700,000 |

To DALS for education program
related to drainage wells and
sinkhole management

100,000 100,000 100,000

Total, All Uses

5,500,000 4,000,000 3,000,000

IOWA DEPARTMENT OF NATURAL RESOURCES
AGRICULTURAL MANAGEMENT ACCOUNT
Budget, FY88, FY89 & FY90

| Sources of Funds | FY88 | FY89 | FY90 |
|--|-----------|-----------|-----------|
| Balance Forward | -- | 76,790 | -- |
| Fertilizer Tonnage Fees | 240,000 | 750,000 | 750,000 |
| Pesticide Sales Fees | -- | 323,000 | 323,000 |
| Pesticide Registration Fees | 1,500,000 | 1,500,000 | 1,500,000 |
| Total Sources | 1,740,000 | 2,649,790 | 2,573,000 |
| Uses of Funds | | | |
| To Dept. of Public Health | 9,000 | 9,000 | 9,000 |
| To U. of I., Center for Health Effects | 79,000 | 237,671 | 230,760 |
| To the Leopold Center | 605,850 | 924,277 | 897,400 |
| To the DNR: | | | |
| 1. Admin GW Grants to Counties | | | |
| 2. Oversight of Cty Programs Relative to Well Testing and Closure (both purposes) | 34,620 | 52,816 | 51,280 |
| To the DNR for Grants to Counties for Testing Private, Rural Wells, and Water Supplies | 398,130 | 607,382 | 589,720 |
| To the U.H.L for Testing Private, Rural Wells | 103,860 | 158,447 | 153,840 |
| To the DNR for Grants to Counties for Closing Abandoned Rural Wells | 207,720 | 316,895 | 307,680 |
| To DALS for Financial Incentives, Studies, Research, and Admin. Costs Related to Ag Drainage Wells and Sinkholes | 175,030 | 343,302 | 333,320 |
| To the DNR for Grants to Cty Conservation Boards Regarding Alternative Roadside Vegt. Management | 50,000 | -- | -- |
| Balance Forward | 76,790 | -- | -- |
| Total Uses | 1,740,000 | 2,649,790 | 2,573,000 |

Notes: The revenue amounts are based on estimates provided by staff in DALS familiar with the fertilizer and pesticide programs. H.F.631 also

provides that fines related to unplugged wells are credited to this account and are to be added to the DALS financial incentives program to reduce a person's cost in properly plugging an abandoned well abandoned prior to July 1, 1987. This amount is expected to be minimal and is not reflect in the above schedules. With some exceptions, the funds are appropriated in terms of percentages with "not more than" language. As a practical matter, if funds are budgeted at less than the specified percentage, the difference would have to be carried forward. The amounts appropriated in this account, with some exceptions, depend upon actual receipts. These receipts will be credited to the account in an uneven stream throughout the year. Thus, the total amount available for each purpose will not be known with certainty until all receipts are credited to the account at June 30 of each year.

**IOWA DEPARTMENT OF NATURAL RESOURCES
HOUSEHOLD HAZARDOUS WASTE ACCOUNT
Budget, FY88, FY89 & FY90**

| | | | |
|--|----------------|----------------|----------------|
| Source of Funds | FY88 | FY89 | FY90 |
| Retailer Permit Fees | 200,000 | 200,000 | 200,000 |
| Uses of Funds | | | |
| To Dept. of Public Health | 2,000 | 2,000 | 2,000 |
| To IDOT, Used Oil Project | 8,000 | -- | -- |
| To DNR for Grants to Service Organizations for Recycling and Reclamation Events | 10,000 | 35,000 | 35,000 |
| To DNR for: Toxic Clean-Up Days | 110,000 | 93,000 | 93,000 |
| Education Programs, Booklets, etc & Administrative Costs | 20,000 | 20,000 | 20,000 |
| To DRF for Administration of the Permit Program | 50,000 | 50,000 | 50,000 |
| Total Uses | 200,000 | 200,000 | 200,000 |

Notes:

Revenue Estimate: DRF has collected \$100,000 to date from approximately 9,000 retailers. Response to the initial mailing by DRF has dropped to "next to nothing." Additional retailers will probably respond when the DNR clearly defines the term "hazardous household waste." On the other hand if the requested A.G.'s opinion states that "gross retail sales" applies only to hazardous products, revenue might decrease significantly.

H.F. 631 appropriates \$80,000 to service organizations for recycling and reclamation events without specifying the time period. Since the bill also allows "up to" \$80,000, less could be budgeted or spent. This schedule arbitrarily spreads the appropriation at the full amount over three years.

Toxic Clean Up Days: H.F. 631 establishes a goal of 12 days in FY88. Based on the two days experience in FY87, the budgeted funds will be enough for only two or three days. This could be increased if receipts exceed the above estimate. The converse might also be necessary.

DRF Administrative Costs: H.F. 631 appears to allow DRF to simply recover the full cost of administering the permits and collecting the revenue. Their initial estimate was \$75,000 last spring, and an up-to-date, accurate estimate has not yet been prepared. If their cost is higher than the budget estimate, the budget for one or more of the other categories would have to be reduced accordingly.

**IOWA DEPARTMENT OF NATURAL RESOURCES
STORAGE TANK MANAGEMENT ACCOUNT
Budget, FY88, FY89 & FY90**

| Source | FY88 | FY89 | FY90 |
|--|---------|---------|---------|
| Balance Forward | 142,900 | -- | -- |
| Annual Tank Fees | 420,000 | 420,000 | 420,000 |
| New Tanks, Late Fees, etc. | 10,000 | 10,000 | 10,000 |
| Total | 572,900 | 430,000 | 430,000 |
| Uses | | | |
| To Dept. of Public Health | 1,000 | 1,000 | 1,000 |
| To Ins. Division for Operations Plan | 25,000 | -- | -- |
| To DNR: | | | |
| Storage Tank Program Administration | 100,000 | 100,000 | 100,000 |
| For Programs which reduce potential for harm to environment and health | 301,030 | 201,000 | 201,000 |
| To DNR for State Remedial Clean-up Efforts | 145,870 | 128,000 | 128,000 |
| Total | 572,870 | 430,000 | 430,000 |

Note: The above allotment to DNR for program administration and for programs which reduce potential, etc, is appropriated as one sum for each year. Therefore, the DNR can adjust funding between those two purposes. The above allocation between those purposes is arbitrary at this point, and will be revised pending the development of a detailed budget for both of those purposes.

**IOWA DEPARTMENT OF NATURAL RESOURCES
SOLID WASTE ACCOUNT
Budget, FY88, FY89 & FY90**

| Sources | FY88 | FY89 | FY90 |
|-----------------|---------|-----------|-----------|
| Balance Forward | 409,938 | -- | -- |
| Tonnage Fees | -- | 1,600,000 | 2,400,000 |
| Total | 409,938 | 1,600,000 | 2,400,000 |

| Uses | FY88 | FY89 | FY90 |
|--|---------|-----------|-----------|
| WMAD appropriation, first 6 cents | 98,385 | 96,000 | 96,000 |
| UNI, Technology Center | 50,000 | 224,000 | 224,000 |
| Development of guidelines for GW monitoring at Sanitary Disposal projects | 261,552 | 280,000 | 280,000 |
| To D.P.H. | | 8,000 | 8,000 |
| Abatement and Cleanup of threats to public health & safety from sanitary landfills if operator is unable to do so. | | 192,000 | 192,000 |
| Demonstration Projects for landfill alternatives to solid waste disposal. | | 800,000 | 1,600,000 |
| Total | 409,938 | 1,600,000 | 2,400,000 |

| | | | |
|--|--|---------|---------|
| Additional retainage by landfill operators from tonnage fee. | | 800,000 | 800,000 |
|--|--|---------|---------|

Note: Whether or not H.F.631 requires landfills to pay a 25 cent fee per ton in FY88 has been challenged. However, H.F. 631 also does not appear to appropriate the FY88 fees if they are collected. Thus, the \$400,000 that will be collected in FY88, assuming the challenge is not successful, is not reflected in the above schedule.

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 7

DECISION

REFERRALS TO THE ATTORNEY GENERAL

The Director requests the referral of the following to the Attorney General for appropriate legal action. Litigation reports have been provided to the Commissioners and are confidential pursuant to Iowa Code Section 22.7(4).

Chicago Northwestern Railroad -- Air Pollution
City of Garner -- Wastewater
Warner Livestock -- Wastewater
Boyer Valley Company -- Wastewater
Elings, Frey, and Catron -- Solid Waste/Penalty

Mike Murphy
August 31, 1987

(105.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 8

DECISION

The Department is requesting that the Commission emergency adopt an amendment to the definition of "emission standard" contained in 567--20.2(4552).

The proposed amendment is to satisfy Federal Environmental Protection Agency program requirements. It is being adopted and implemented on an emergency basis because the amendment to the definition is not a change in the meaning of the term "emission standard," but merely clarification and because the discrepancy, although it does not affect implementation of the state program, does affect federal delegation. The regulated public is not affected by this rule amendment.

A copy of the amendment is attached.

ALLAN STOKES
August 26, 1987

(112.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION [567]
Emergency Adopted and Implemented

Pursuant to Iowa Code section 455B.133, the Environmental Protection Commission hereby emergency adopts an amendment to the definition of "emission standard" contained in 567--20.2(455B).

A review of changes to the state's stack height regulation (see ARC 6280, 1/15/86) by the U.S. Environmental Protection Agency has resulted in a request by the agency to modify the emission standard definition.

The main difference between the existing definition and the one recommended by EPA is the concept of continued compliance. The emission standard definition which is adopted is identical to the federal definition at 40 CFR part 51.100(z) as amended November 7, 1986.

This amendment is adopted to satisfy Federal Environmental Protection Agency program requirements. It is being adopted and implemented on an emergency basis because the amendment to the definition is not a change in the meaning of the term "emission standard," but merely a clarification and because the discrepancy, although it does not affect implementation of the state program, does affect federal delegation. The regulated public is not affected by this rule amendment.

For these reasons, the Environmental Protection Commission finds that, pursuant to Iowa Code section 17A.4(2) and 17A.4(2) that public notice and participation is impracticable and that the normal effective date of this rule should be waived and the rule be made effective upon filing on September 22, 1987.

The Environmental Protection Commission adopted this rule at a regular meeting on September 22, 1987.

This rule implements Iowa Code Chapter 455B.

The definition of "emission standard" in 567--20.2(455B) is stricken and the following definition is inserted in lieu thereof.

"Emission limitation" and "emission standard" mean a requirement established by a state, local government, or the administrator which limits the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

Date

Larry J. Wilson, Director

(EP20E.RUL/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 9

INFORMATION

AMENDMENTS TO NEW SOURCE PERFORMANCE STANDARDS AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

The Department has adopted by reference the Federal New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) through May 1, 1985. Since that date, additional NSPS and NESHAPS subparts have been promulgated by the Environmental Protection Agency and several revisions have been made in the test methods and procedures required for NSPS and NESHAPS regulated sources.

The attached notice of intended action proposes to make the Department's rules regarding NSPS consistent with 40 Code of Federal Regulations Part 60 and the Department's rule regarding NESHAPS consistent with 40 Code of Federal Regulations Part 61.

The following NSPS standards have been promulgated by EPA since May 1, 1985:

- 1) Iron and steel plants - (Subpart Na)
potential sources - none known
- 2) Equipment leaks of VOC from on-shore natural gas processing plants - (Subpart KKK)
potential sources - none known
- 3) On-shore natural gas processing: SO₂ emissions - (Subpart LLL)
potential sources - none known
- 4) Nonmetallic mineral processing plants - (Subpart OOO)
potential sources - 260 licensed operators at 1200 locations
known sources - one
- 5) Industrial - commercial - industrial steam generating units - (Subpart Db)
known sources - five
- 6) Volatile organic liquid storage vessels - (Subpart Kb)
potential sources - none known

Additional NESHAPS subparts have been promulgated by the Environmental Protection Agency since May 1, 1985. Four of these subparts regarding radionuclide and radon 222 emissions are not delegable to the states by EPA. Iowa is seeking delegation of the remaining NESHAPS standard for inorganic arsenic. There are no known sources in Iowa subject to this standard.

The adoption of the attached amendments to 567--23.1(455B) Iowa Administrative Code would not impose any additional restrictions on industry, but merely transfer the authority to the Department for enforcing the emission standards and for issuing construction permits for any affected facilities proposing to locate in Iowa.

The additional work load to the Department resulting from adoption of these rules is expected to be minimal since NSPS only applies to new construction or modification and many potential sources are already being inspected on a routine basis.

The Commission will be requested to approve the attached rules for public notice and comment during its October meeting.

Allan Stokes
August 24, 1987

ENVIRONMENTAL PROTECTION COMMISSION [567]
Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 23, "Emission Standards for Contaminants" by proposing to adopt by reference recently promulgated federal regulations pertaining to new source performance standards and emission standards for hazardous air pollutants and by including, as facilities affected by these standards, seven additional source or pollutant categories.

In order to prevent new air pollution problems, by section 111(b)(1)(A) of the Clean Air Act, the Administrator of the Environmental Protection Agency was required to publish a list of categories of major sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger health or welfare. Regulations establishing standards of performance for new sources within each category were promulgated and have been adopted by reference by the Department. Each standard of performance establishes allowable emission limitations that reflect the degree of emission limitation which is achievable through the application of the best technological system of continuous emission reduction. These regulations apply only to "new sources," that is, sources, the construction or modification of which is commenced after the proposal date of the individual rule. The rules are adopted by reference by subrule 567--23.1(2)(455B).

Similarly, by Section 112 of the Clean Air Act the EPA was required to adopt emission standards for "hazardous air pollutants," those pollutants which cause or contribute to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness. These standards apply to new and existing sources and are adopted by reference by subrule 567--23.1(3)(455B).

In greater detail, the following amendments are proposed:

Item 1 amends subrule 567--23.1(2)(455B) by including, as federal regulations adopted by reference, those regulations pertaining to 40 C.F.R. part 60 which have been promulgated through June 4, 1987. Part 60, which sets forth federal standards of performance for new stationary sources, is amended by adding the six new source categories specifically adopted herein and by amending various emission standards, opacity standards and testing methods.

Item 1 further amends subrule 567--23.1(2)(455B) by adding, as facilities specifically affected by the standards of performance for new stationary sources, the following types of facilities: iron and steel plants, on-shore natural gas processing plants, nonmetallic mineral processing plants, industrial-commercial-institutional steam generators, and volatile organic liquid storage vessels.

Item 2 amends subrule 567--23.1(3)(455B) by including, as federal regulations adopted by reference, those regulations pertaining to 40 C.F.R. part 61 which have been promulgated through March 19, 1987. Part 61 which sets forth emission standards for hazardous air pollutants is amended by the addition of one new source category. Facilities in this source category which are affected by this amendment are primary copper smelters, glass manufacturing plants and arsenic plants.

Any person interested in receiving a copy of the federal regulations proposed to be adopted by reference may contact the Department of Natural Resources. Copies are available upon request from the Department for the cost of reproduction.

Any interested party may file a written statement of position on the subjects covered by the proposed rules no later than _____. These written statements should be directed to the Director of the Department of Natural Resources, 900 East Grand Avenue, Des Moines, Iowa 50319. Persons or organizations are also invited to present oral or written comments at a public hearing on these proposed amendments which will be held on _____

These rules are intended to implement Iowa Code section 455B.133.
The following amendments are proposed.

ITEM 1. Subrule 567--23.1(2)(455B) is amended as follows:

23.1(2) New source performance standards. The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended through May-1, -1985 June 4, 1987, are adopted by reference and shall apply to the following affected facilities. The corresponding 40 C.F.R. Part 60 subpart designation is in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C) and the general provisions (Subpart A) of 40 C.F.R. Part 60 also apply to the affected facilities.

Further amend rule 23.1(2) by revising the following paragraphs.

bb. Petroleum storage vessels. Any storage vessel for petroleum liquids constructed, reconstructed, or modified after June 11, 1973, and prior to May 19, 1978, having a storage capacity greater than 151,416 liters (40,000 gallons). (Subpart K)

cc. Petroleum storage vessels. Any storage vessels for petroleum liquids constructed after May 18, 1978 and prior to July 23, 1984, having a storage capacity greater than 151,416 liters (40,000 gallons). (Subpart Ka)

Further amend rule 23.1(2) by adding the following paragraphs:

yy. Iron and steel plants. Secondary emissions from basic oxygen process steelmaking facilities for which construction commenced after January 20, 1983. (Subpart Na)

zz. Equipment leaks of VOC from on-shore natural gas processing plants. A compressor and all equipment defined in 40 C.F.R., Part 60.631 which commences construction after January 20, 1984. (Subpart KKK)

aaa. On-shore natural gas processing: SO₂ emissions. Each sweetening unit and each sweetening unit followed by a sulfur recovery unit which commences construction after January 20, 1984. (Subpart LLL)

bbb. Nonmetallic mineral processing plants. Each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or rail car loading station in fixed or portable nonmetallic mineral processing plants for which construction was commenced after August 31, 1983. (Subpart 000)

ccc. Industrial-Commercial-Institutional Steam Generating Units. Steam generating units for which construction commenced after June 19, 1984 and which has a heat input capacity of more than 100 million Btu/hour. (Subpart Db)

ddd. Volatile Organic Liquid Storage Vessels. Volatile organic liquid storage vessels which commence construction after July 23, 1984. (Subpart Kb)

ITEM 2. Subrule 567--23.1(3)(455B) is amended as follows:

567--23.1(3) Emission standards for hazardous air pollutants. The federal standards of emissions for hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended through May-1, -1985 March 19, 1987, are adopted by reference, except 40 C.F.R. subsection 61.20 through subsection 61.28,

subsection 61.90 through 61.98, subsection 61.100 through 61.108, subsection 61.120 through subsection 61.126, and subsection 61.145 through subsection 61.147, and shall apply to the following affected pollutants and facilities and activities listed below. The corresponding 40 C.F.R. Part 61 subpart designation is in parentheses. Reference test methods (Appendix B), compliance status information requirements (Appendix A), quality assurance procedures (Appendix C) and the general provisions (Subpart A) of Part 61 also apply to the affected activities or facilities.

Further amend subrule 23.1(3) by adding the following paragraph:

h. Inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities. Each metallic arsenic production plant and each arsenic trioxide plant that processes low-grade arsenic bearing materials by a roasting condensation process. (Subpart P)

(EP23N.min/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 10

INFORMATION

NOTICE OF INTENDED ACTION -- CHAPTER 100, "SCOPE OF TITLE-DEFINITIONS-
FORMS-RULES OF PRACTICE", AND CHAPTER 102, "PERMITS"

Iowa Code section 455B.304 requires the Commission to adopt rules prohibiting the disposal of uncontained liquid waste in a sanitary landfill.

Federal regulations for hazardous wastes in 40 CFR 264.314 and 40 CFR 265.315 reference a test to demonstrate the absence or presence of free liquids in either a containerized or a bulk waste. The test, called the Paint Filter Liquids Test Method 9095 EPA SW 846, is easily applied to various materials. A 100-milliliter or 100-milligram sample is placed on a standard 60-mesh conical paint filter for five minutes. If any liquid passes through the filter after five minutes, the waste is determined to contain free liquids.

The proposed rule changes are to add the definition of a free liquid to the definitions contained in rule 100.2(455B) and add a portion to rule 102.14(455B) which would prohibit free liquids from being disposed in a sanitary landfill.

Stu Schmitz
September 9, 1987

(113.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.304, the Environmental Protection Commission proposes to adopt amendments to 567--Chapter 100, "Scope of Title-Definitions-Forms-Rules of Practice," and 567--Chapter 102, "Permits," Iowa Administrative Code.

Iowa Code section 455B.304 requires the Commission to adopt rules prohibiting the disposal of uncontained liquid waste in a sanitary landfill.

Federal regulations for hazardous wastes in 40 CFR 264.314 and 40 CFR 265.315 reference a test to demonstrate the absence or presence of free liquids in either a containerized or a bulk waste. The test, called the Paint Filter Liquids Test Method 9095 EPA SW 846, is easily applied to various materials. A 100-milliliter or 100-milligram sample is placed on a standard 60-mesh conical paint filter for five minutes. If any liquid passes through the filter after five minutes, the waste is determined to contain free liquids.

The proposed rule changes are to add the definition of a free liquid to the definitions contained in rule 100.2(455B) and add a portion to rule 102.14(455B) which would prohibit free liquids from being disposed in a sanitary landfill.

Any interested person may file with the Director written comments on the proposed amendment through November 13, 1987. Interested persons may also provide oral comments at public hearings to be held Des Moines, Iowa City and Council Bluffs as follows: Tuesday, November 10, 1987 at 3:00 p.m. in the east half of the fifth floor conference room of the Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa; on Thursday, November 12, 1987 at

3:00 p.m. in the conference room of the Geological Survey Bureau, 125 North Capitol Street, Iowa City, Iowa; and on Friday, November 13, 1987 at 3:00 p.m. in the Community Hall Room, 205 South Main, Council Bluffs, Iowa.

This rule is intended to implement Iowa Code section 453B.304.

The following amendments are proposed.

Amend rule 100.2(455B) by adding the following definition:
"Free liquid" means the liquid produced when a 100 milliliter or 100 milligram representative sample is placed on a standard mesh number 60 (fine mesh size) conical paint filter for five minutes. Method 9095 EPA SW 846.

Add the following rule to 102.14(455B) as follows:

102.14(3) Free liquids or waste containing free liquids.
No free liquids or waste containing free liquids shall be disposed in a sanitary landfill.

Date

Larry J. Wilson, Director

(EP102.BUL/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 11

DECISION

REVISIONS TO CHAPTERS 50, 51 AND 52--WATER RIGHTS ALLOCATION RULES

It is recommended that the Commission approve the attached copy of revisions to Chapters 50, 51 and 52 regarding water conservation and priority allocation. A copy of the Public Participation Responsiveness Summary is also attached.

The revisions to Chapters 50, 51 and 52--Water Rights Allocation Rules were sent to 26 interested and affected groups. In addition, a general news release was made.

Several grammatical and stylistic changes were suggested and most were adopted. Two substantive changes were made. Under Item 11, new paragraph 52.2(4)"b" pertaining to backflow-prevention valves is modified to conform with existing paragraph 52.2(1)"e". Under Item 4, new paragraph 52.9(2)"d" is amended by adding stream electric generating plants to examples of essential water-requiring activities.

On May 20, 1987, the Commission approved a Notice of Intended Action to hold three public hearings and receive comments on the proposed revisions. The public hearings were held on July 7, July 8 and July 10, 1987, and the written comment period closed on July 20, 1987. Three comment letters were received. One oral comment was received at the public hearing at Des Moines on July 8. No oral comments were received at the hearings on July 7 at Iowa City and July 10 at Council Bluffs. The comments and responses are included in the Public Participation Responsiveness Summary.

Louis Gieseke
September 3, 1987

(I14.MIN/sc)

**IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

**PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY
FOR PROPOSED WATER CONSERVATION AND
PRIORITY ALLOCATION RULES**

Rules providing administrative procedures for implementing water conservation requirements and priority allocation suspension or restriction of water use in accordance with Iowa Code Sections 455B.265, 455B.266 and 455B.271.

The attached information constitutes a summary of written comments received on the proposed rules and amendments. Three comment letters were received. One comment was received at the public hearing in Des Moines on July 8, 1987. That comment was repeated in a comment letter (see comment No. 1). No oral comments were received at the public hearings on July 7, 1987 at Iowa City and July 10, 1987 at Council Bluffs.

1. Commentor: Dean A. Fagerlind, Iowa Golf Course Superintendents' Association.

Comment: The area of the rules that we as an Association disagree with is our placement within the priority allocation system. When trying to maintain golf course turf-grass, it is neither a frivolous nor incidental commodity but rather an absolute necessity for our multi-million dollar industry. There are 270 nine-hole and 65 eighteen-hole golf courses in the state of Iowa, all of which produce goods and services as well as employ hundreds of full and part-time employees. A conservative estimate says that the average eighteen-hole facility will have annual operating expenditures of \$1.5 million, and the average nine-hole course expends half that figure. We believe that \$300 million places us as a major service industry and we would ask the Commission to consider moving us to the industrial category.

Discussion: The following definitions of industrial and recreational uses have been proposed as a part of these rules:

"Industrial use" means a use of water by manufacturing, processing, commercial, and other industrial facilities incidental to providing a product or a service; excluding domestic use, irrigation use, livestock use, power generation use, and recreational and aesthetic use. Examples include but are not limited to manufacturing, food processing, industrial cooling, excavation and processing of rock and gravel products, commercial laundries, cooling of perishables and electrical power generation other than for public consumption.

"Recreational and aesthetic use" means a use of water which can be easily curtailed and is not essential for the preservation of life, the general welfare, or the state's economic base. Examples include but are not limited to flooding of wildlife areas; filling of pools and fountains; nonessential cooling; car washing; street cleaning; washing of other exterior surfaces such as windows and walls; amusement park-type water rides; turf watering such as lawns, golf courses, athletic fields; and watering of landscape plantings.

Golf course watering is not an essential use for the preservation of life, general welfare or state's economic base; therefore, it is a recreational use.

Recommended Action: None.

2. Commentor: Ralph F. Schlenker, Iowa Power and Light Company.

Comment: Iowa Power supports the inclusion of "power generation use" in subrule 52.2(2). This amendment recognizes the essential need for water in the generation of power and the responsibility a power company has to plan for and supply the electric needs of its customers.

Recommended Action: None.

3. Commentor: Ralph F. Schlenker, Iowa Power and Light Company.

Comment: Regarding revisions to subrule 52.9(2), Iowa Power suggests that an alternative determination of consumptive use be allowed. For a cooling tower, for example, the permittee should be able to submit the expected consumptive use calculated according to design specifications.

Discussion: Consumptive use has been defined as not only the physical loss as water, such as by evaporation, but also the loss of water with respect to its source. For example, if water is withdrawn from a deep aquifer and subsequently is discharged to a surface stream, the withdrawal may be considered to be entirely consumptive with respect to

the deep aquifer. Therefore, the requested determination of consumptive water use from a cooling tower may not always be appropriate.

In Subrule 52.9(3), water withdrawal and discharge amounts are required for an emergency conservation plan "as applicable." The purpose of this information is to determine consumptive use. If this information is not available, it would certainly be applicable to use calculated evaporation from a cooling tower to determine consumptive use.

Recommended Action: None.

4. Consentor: Ralph F. Schlenker, Iowa Power and Light Company.

Comment: Listed in Subrule 52.9(2) are several conditions when specific emergency conservation requirements normally would not be included in a water use permit. Iowa Power supports conditions (a) through (f). Concerning paragraph (d), however, we believe power generation is an "essential activity." It is expected that water shortages would occur during periods of extended drought and high temperatures. At those times, electric demand is at its highest and it is essential that Iowa Power have access to the water resources necessary to operate its generating facilities. We therefore recommend Subrule 52.9(2), paragraph (d), be revised as follows:

- d. The proposed or permitted use is unable to conserve water without substantially disrupting or ceasing an essential activity which requires water such as operating a steam electric generating plant, watering livestock or operating a commercial laundry.

Discussion: The term "essential activity" is intended to relate to the individual permittee only. The overall relative importance of water uses has been established by the legislature in the priority allocation plan as given in subrule 52.10(3).

The 1985 State Water Plan report proposed the following for emergency conservation:

"Generally, emergency conservation measures would give users full access to water at the level necessary to maintain minimum operations or service. Emergency conservation would not require closing of industrial facilities, [closing of] power plants or halting of irrigation, but it may require ceasing certain nonvital water-consuming operations of such facilities."

This concept is the basis for the provision in Subrule 52.9(2), paragraph d. In particular, the intent is that businesses not be required to cutback production as a means of conserving water. The provision primarily exempts businesses from specific emergency conservation conditions when water use can only be reduced by a cutback in production. Operation of a steam electric generating plant would likely meet this criterion and could appropriately be added as an example in Paragraph d. However, it should be noted that the exempted water uses are only examples. Permits for such uses will not be exempt from specific emergency conservation permit conditions if significant amounts of other "nonessential" uses (e.g. lawn watering) are included.

Recommended Action: Make suggested change.

5. Commentor: Ralph F. Schlenker, Iowa Power and Light Company.

Comment: Subrule 52.9(3)(c) requires that emergency conservation plans provide for a 50 percent reduction in consumptive water use. If this requirement cannot be met, the Department may grant a variance if the water use is determined to be essential. Iowa Power supports the allowance for such variances and believes power generation should be exempted. An electric utility has a responsibility to plan for and supply its customers with adequate electric power and must be assured a dependable supply of water for generation. A 50 percent reduction in consumptive use at a power station will likely require a substantial reduction in generation capability. Maintenance of electric service is

vital to the public safety and health and should not be constrained by such a condition on its generating facilities.

Discussion: See discussion to comment Nos. 4 and 10.

Recommended Action: None.

6. Commentor: John M. Lewis, Iowa Utility Association.

Comment: Regarding the proposed definition of "power generation use" in Rule 50.2, we question the use of the term "public consumption." This term is in the law so it must be in the rules, but it needs to be interpreted. Specifically, what does "public consumption" mean? Does it mean generation for use only by public bodies such as federal, state and local government agencies? Does it mean generation for use only in public places, excluding uses for such as private residences and apartments? Does it exclude generation for use by the power plant which is used in the power production process? These questions should be answered before drought conditions exist and while it can be done in an orderly and reasonable manner.

Discussion: The intent of the definition is for "power generation use" to apply to public utilities in which power is generated for distribution and sale to the public.

Recommended Action: Modify the definition of "power generation use" by deleting "public consumption" and inserting in its place "distribution and sale to the public."

7. Commentor: John M. Lewis, Iowa Utility Association

Comment: Subrule 52.2(2) states that the amount of water authorized for power generation use shall be consistent with industry-wide usage for the same or similar purposes.

Is this statement broad enough to give recognition to the fact that the amount of water used by a power generation facility will vary by the design of the plant (different types of cooling systems) and the size of the facility? We believe industry standards can be developed which reflect these variables but are concerned that a narrow definition will impose one standard on all facilities.

Discussion: The proposed amendments to Subrule 52.2(2) simply make the subrule consistent with the existing rules. The existing rules include power generation as an industrial use, whereas power generation is a separate type of use in the proposed rule amendments. However, it would be appropriate to make other clarifications to this subrule at this time.

Recommended Action: Add the underlined wording to Subrule 52.2(2) as follows: . . . same or similar purposes and types of facilities and shall . . .

8. Commentor: John M. Lewis, Iowa Utility Association.

Comment: With respect to subrule 52.7(2), we are confident that the staff, in making its determination to invoke the emergency provisions to suspend or restrict the water use of an electric generating station, will take into consideration the imminent danger or substantial injury to the public health, or safety or welfare which would result from an inadequate power supply. It is conceivable that in a worst-case situation generating facilities on inland water sources would need to remain operative. The Commission and staff can be assured of our utmost cooperation in evaluating the alternatives should such a situation arise. This rule also suggests that an emergency order can be stayed, modified or vacated at a hearing before the Commission. We would raise the question as to whether the rules should establish a procedure for such an emergency hearing.

Discussion: With respect to procedures for an emergency hearing, the operation of the Environmental Protection Commission is governed by 567--Chapter 1, Iowa Administrative Code (IAC). While this chapter does

not have a specific provision for "emergency" hearings, the general rule provisions can accommodate an emergency meeting. More specifically, the Chairman of the Commission or the Department Director may be contacted to establish a meeting of the Commission under 567 IAC Subsection 1.2. Further, 567 IAC Subsection 1.4(2) makes an allowance for posting the Commission's agenda where circumstances prevent doing so at least 24 hours in advance of the meeting. Public participation and conduct of the meeting are addressed in 567 IAC Subsections 1.5 and 1.7.

Recommended Action: None.

9. Commentor: John M. Lewis, Iowa Utility Association.

Comment: Regarding subrule 52.9(2): Subpoints "a" to "c" -- We support these as stated. We would recommend the addition of power generation to the examples cited in subpoint "d" of this rule. We have addressed the rationale for this in our comments on Item 11 (See Comment No. 10).

Discussion: See Comment No. 4.

10. Commentor: John M. Lewis, Iowa Utility Association.

Comment: With respect to Subparagraph 52.9(3)c(1), we recommend the addition of "or use for power generation" at the end of the second sentence in this section. In power plants which use evaporative cooling systems (cooling towers), over 90 percent of the water use is consumptive and is required on a fixed ratio of water use per unit of production. It is virtually impossible to reduce this ratio by even 5 percent and, therefore, a 50 percent reduction requirement is not reasonable.

It appears that power plants will be exempt from emergency conservation provisions under 52.9(2) b-c and so it would be consistent to relieve them of the 50 percent reduction requirement under this section.

Discussion: Subparagraph 52.9(3)c(1) also provides for variances in the 50 percent reduction requirement when justification is provided.

Variances are to be granted on a case-by-case basis and could include a determination for a lower level of reduction. Therefore, it is not necessary and may not be appropriate to exempt power generation use from this provision.

Recommended Action: None.

11. Commentor: Missouri River Floodplain Irrigators.

Comment: Informal comments regarding 52.2(4)b were received by phone from three parties. The comments generally were that an American Water Works Association-approved reduced-pressure backflow-prevention valve is designed for municipal use and is more sophisticated than needed for watering turf and landscape plantings.

Discussion: We agree that this specification is not appropriate and the rule should be made consistent with Rule 52.2(1)e, "irrigation system check valve."

Recommended Action: Rewrite 52.2(4)b as follows:

b. Watering system backflow-prevention valve. Each permit authorizing the use of water for turf or landscape plantings shall require the permittee to submit documentation that an adequate check valve has been installed to prevent backsiphoning of contaminants into the water source before a fertilizer, pesticide, herbicide or other additive is introduced into the irrigation system.

12. Commentor: Representative Betty J. Clark, Legislative Rules Review Committee.

Comments: Various suggested wording changes.

Recommended Action: Make the following wording changes:

- 1) Item 4 -- strike "such"
- 2) Item 5 -- strike "therefor"
- 3) Item 6 -- strike "therefor"
- 4) Item 11 -- In the next to the last sentence, replace "such" with "that"
- 5) Item 11 -- Replace the last sentence with the following: "The emergency order shall remain in effect until a date specified in the order, unless the order is revoked or the expiration date modified, due to a change in the situation giving rise to the order or a decision following appeal."
- 6) Item 12 -- In proposed subparagraph 52.9(3)b.(1) replace "such" with "these"
- 7) Item 13 -- In the third paragraph of subrule 52.10(1), replace "such" with "that" in the last sentence.

(PP01.EPC/sc)

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455A.6, 455B.105 and 455B.263, the Environmental Protection Commission amends Chapter 50, "Scope of Division- Definitions-Forms-Rules of Practice," Chapter 51, "Water Permit or Registration-When Required" and Chapter 52, "Criteria and Conditions for Authorizing Withdrawal, Division and Storage of Water," Iowa Administrative Code. These amendments implement Iowa Code sections 455B.265, 455B.266 and 455B.271 which provide the authorization and conditions under which the Department may require water use permits to contain water conservation conditions and may suspend or restrict water use by category of use.

Notice of Intended Action was published in the June 17, 1987, Iowa Administrative Bulletin as ARC 7682. In addition to oral comments received at the public hearing on July 8, 1987, the Department received three written responses.

Aside from nonsubstantive grammatical and stylistic changes, the adopted rules differ from the Notice of Intended Action in two respects. First, under Item 7, new paragraph 52.2(4)"b" pertaining to backflow-prevention valves is modified to conform with existing paragraph 52.2(1)"e". Second, under Item 12, new paragraph 52.9(2)"d" is amended by adding steam electric generating plants to examples of essential, water-requiring activities.

These rules were adopted by the Environmental Protection Commission at its September 2, 1987 meeting and will become effective on November 25, 1987.

These rules are intended to implement Iowa Code sections 455B.265, 455B.266 and 455B.271.

ITEM 1. Amend one definition in rule 50.2(455B) as follows:

"Consumptive use" means any use of water, except for a municipal or municipal-type use, which involves substantial evaporation, transpiration, or incorporation of water into a product or removal of water from a watercourse source without prompt return thereto. Consumptive uses include, but are not limited to, irrigation, evaporative cooling, and flooding of wildlife areas by withdrawals or diversions from watercourses or aquifers. Water use by community public water supplies is not considered to be consumptive in the administration of rules 52.3(455B), 52.4(455B) and 52.8(455B).

ITEM 2. Amend rule 50.2(455B) by deleting the following definitions: "industrial use," "irrigation use," "municipal use," and "municipal-type use."

ITEM 3. Amend rule 50.2(455B) by adding the following seven definitions:

"Community public water supply" means a system for the provision to the public of piped water for domestic use which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Domestic use" means a use of water for human consumption and sanitation and public safety (fire protection).

"Industrial use" means a use of water by manufacturing, processing, commercial, and other industrial facilities incidental to providing a product or a service; excluding domestic use, irrigation use, livestock use, power generation use, and recreational and aesthetic use. Examples include but are not limited to manufacturing, food processing, industrial cooling, excavation and processing of rock and gravel products, commercial laundries, cooling of perishables and electrical power generation other than for public consumption.

"Irrigation use" means a use of water which is artificially applied to land to aid the growing of general farm crops (hay, corn, soybeans, oats, grain sorghum and wheat) and specialty crops.

"Livestock use" means a use of water in the production of domestic animals such as drinking, sanitation and cooling.

"Power generation use" means a use of water incidental to the generation of electric power for distribution and sale to the public including process water (e.g., boiler makeup) and water for cooling purposes.

"Recreational and aesthetic use" means a use of water which can be easily curtailed and is not essential for the preservation of life, the general welfare, or the state's economic base. Examples include but are not limited to flooding of wildlife areas; filling of pools and fountains; nonessential cooling; car washing; street cleaning; washing of other exterior surfaces such as windows and walls; amusement park-type water rides; turf watering such as lawns, golf courses, athletic fields; and watering of landscape plantings.

ITEM 4. Amend subrule 51.6(4) as follows:

51.6(4) Rural water districts. A permit shall be required for withdrawals of water by any rural water district having its own source of water and such withdrawals shall be classified as a municipal-type use by a community public water supply.

ITEM 5. Amend subrule 52.2(2) as follows:

52.2(2) The amount of water authorized for industrial use or power generation use shall be consistent with industry-wide usage for the same or similar purposes and types of facilities and shall provide for growth where need therefor is demonstrated by the applicant.

ITEM 6. Amend subrule 52.2(3) as follows:

52.2(3) The amount of water authorized for municipal use by a community public water supply shall not exceed two hundred (200) gallons per day per capita except additional water may be provided for growth and industrial use where need therefor is demonstrated by the applicant.

ITEM 7. Rescind subrule 52.2(4) and insert in lieu thereof the following:

52.2(4) Recreational and aesthetic permits.

a. Authorized amount. The amount of water authorized for recreational and aesthetic uses shall be determined on a case-by-case basis.

b. Watering system backflow-prevention valve. Each permit authorizing the use of water for turf or landscape plantings shall require the permittee to submit documentation that an adequate check valve has been installed to prevent back-siphoning of contaminants into the water source before a fertilizer, pesticide, herbicide or other additive is introduced into the irrigation system.

This rule is intended to implement Iowa Code section 455B.265.

ITEM 8. Amend paragraphs 52.4(3)"a" and "b" as follows:

a. Two hundred gallon per minute (200 gpm) restriction on irrigation use and recreational and aesthetic use. New withdrawals of water for irrigation and recreational and aesthetic uses shall not be in excess of two hundred gallons per minute (200 gpm). Existing permits for irrigation and recreational and aesthetic uses that authorize withdrawal rates in excess of two hundred gallons per minute (200 gpm) shall not be renewed if serious impact on other water withdrawals or on groundwater piezometric levels occur or are forecasted to occur.

b. Two thousand gallon per minute (2000 gpm) restriction on industrial use and power generation use. New withdrawals of water for industrial and power generation uses at one plant location shall not exceed two thousand gallons per minute (2000 gpm).

ITEM 9. Amend paragraph 52.4(4)"d" as follows:

d. Priorities in renewal, modification and cancellation of permits. If permit renewals must be denied or if permits must be modified or canceled to prevent or abate water level declines which constitute a significant threat to the public interest in the availability of water for sustained beneficial use of the aquifer, withdrawals of water for ~~municipal-and-municipal-type-water systems~~ community public water supplies and for agricultural research shall have priority over withdrawals of water for other regulated uses.

ITEM 10. Amend subrule 52.7(1) by adding paragraph "d" as follows:

d. Addition of conservation provisions. Modification to include conservation provisions is deemed necessary by the department.

ITEM 11. Amend subrule 52.7(2) as follows:

52.7(2) Emergency suspension or restriction. Notwithstanding any other rule or permit conditions, if the department finds that it is imperatively necessary in an emergency to protect from imminent danger or substantial injury either the public health, welfare; and or safety, or the public or private interest in lands or water, or to implement the priority allocation system pursuant to rule 52.10(455B), and these findings are incorporated into a written emergency order to the permittee, then the department may immediately suspend or restrict operations under a permit and require the permittee to take measures necessary to prevent or remedy the injury, either to the public health, welfare, or safety or to the public or private interests in lands and waters. The emergency order shall state an effective date appropriate to the situation which invoked the suspension or restriction and shall be immediately effective on such that date unless stayed, modified, or vacated at a hearing before the commission or by the court. The emergency order shall remain in effect until a date specified in the order, such time as unless the order is revoked or the expiration date modified, due to a change in the situation giving rise to the order no longer existing; or as granted from a decision following appeal procedures.

ITEM 12. Rescind rule 52.9(455B) and insert in lieu thereof the following:
567--52.9(455B) Water conservation.

52.9(1) General. The purpose of water conservation requirements is to preserve the availability of water which is withdrawn for use, as opposed to protected flow provisions in rules 52.3(455B), 52.4(455B), and 52.8(455B) which preserve instream flows.

Each permit granted after July 1, 1986, will include conditions requiring routine (day-to-day) conservation practices, and requiring emergency conservation practices after notification by the department. Existing permits may be modified to include conservation conditions pursuant to paragraph 52.7(1)"d," if deemed necessary by the department.

Only general provisions for routine conservation will be included in a permit, unless water is to be withdrawn from a protected water source designated in 567--chapter 53 which has specific requirements for routine conservation. Permit conditions requiring routine conservation are primarily intended to raise awareness of water usage, develop a preparedness for periods of water shortages, and minimize waste of water.

General conditions involving emergency conservation will be included in all permits. Specific emergency conservation conditions may be included in a water use permit pursuant to subrule 52.9(2). If specific emergency conservation permit conditions are required, they will be based on a water conservation plan developed by the permittee or applicant, in accordance with subrule 52.9(3), and approved by the department.

The purpose of emergency conservation is to minimize consumptive use of water from a source experiencing a temporary shortage. Emergency conservation restrictions will be imposed only when water shortages are imminent or actually exist, in accordance with rule 52.10(455B). Long-term water shortages may be dealt with in the protected source rules, 567--chapter 53.

52.9(2) Applicability of emergency conservation. Specific emergency conservation requirements may be made a condition of a water withdrawal permit if the proposed or permitted withdrawal could result in a significant consumptive use of water from a source which is likely to experience a short-term shortage.

A determination of the consumptive nature of a water use will be based on the hydrologic relationship of the sources of water withdrawal and wastewater discharge. If the source of withdrawal and discharge are the same, the consumptive use from the source will be considered to be the amount of water withdrawal minus the wastewater discharge. If the sources of withdrawal and discharge are hydrologically independent, then consumptive use from the source of withdrawal will be considered to be the total amount of withdrawal. Water sources which are in close hydrologic connection (e.g., an alluvial aquifer and adjacent stream) will be considered as the same source.

Specific emergency conservation requirements will not normally be included in a water use permit under any of the following conditions:

a. The proposed or existing permitted water use involves a consumptive use of less than 25,000 gallons per day from any water source during periods of substantial water shortage.

b. The proposed or permitted use is subject to protected stream flow conditions pursuant to rules 52.3(455B), 52.4(455B), and 52.8(455B).

c. The water source for the proposed or permitted use is from a surface water impoundment or purchased storage owned by the applicant or permittee.

d. The proposed or permitted use is unable to conserve water without substantially disrupting or ceasing an essential activity which requires water, such as operating a steam electric generating plant, watering livestock, or operating a commercial laundry.

e. The proposed or permitted withdrawal is from a source of water which is not likely to experience a substantial short-term water shortage including, but not limited to, the Missouri and Mississippi Rivers and adjacent alluvial aquifers, the Jordan Sandstone Aquifer, and the Iowa Great Lakes.

f. The source of water is or will be utilized by only the permitted or proposed water user and withdrawal from the source for the permitted or proposed use has no potential for affecting other water uses.

52.9(3) Water conservation plans. Unless specific emergency conservation permit conditions are not required in accordance with subrule 52.9(2), the applicant or permittee shall submit a water conservation plan with an application for a new water use permit or renewal of an existing permit. The department may also require a water conservation plan to be submitted by any existing permittee after a minimum of 90 days' notice. If an applicant is in doubt as to whether or not the application requires a water conservation plan, the department should be contacted and provided with a description of the proposed source of water, intended use, and desired amount and rate of withdrawal. The department will then make a determination of whether or not a conservation plan is necessary. If a water conservation plan is required with an application for permit renewal, the department will notify the permittee at least 120 days prior to expiration of the permit.

Water conservation plans shall describe the measures to be used to achieve water conservation and estimate water savings from each measure. Water

conservation plans must contain the following information, as applicable, to be approved by the department.

a. General provisions. The following information shall be included in all water conservation plans:

(1) A description of each source of water withdrawal (i.e., well or surface water intake) including the location, well depth, pumping rate, and date of installation.

(2) A description of wastewater discharge including the location and discharge frequency.

(3) Monthly withdrawal amounts from each source for the past five years.

(4) Monthly total water withdrawal amount for the past five years.

(5) Monthly total wastewater discharge amount for the past five years.

(6) A quarterly breakdown, by the water use categories in subrule 52.10(3), of total water use and estimated consumptive water use over the past five years.

(7) A description of any previous water shortage problems, including the cause, frequency, other affected parties, and how they were resolved.

(8) Identification of nearby water supplies which are potentially affected by or could potentially affect the proposed or permitted withdrawal.

(9) A means of identifying impending water shortage problems (e.g., water level in wells or a reservoir decline to a certain level or stream flows fall to a certain rate).

b. Routine conservation provisions. Consideration of routine conservation is encouraged although it is not normally required in a water conservation plan. Documented water savings from routine conservation measures will be credited towards emergency conservation requirements. Suggested routine conservation measures include:

(1) Use of water-saving plumbing devices or required use of these devices in building codes.

(2) Scheduling irrigation to minimize peak water use.

(3) Use of efficient irrigation techniques.

(4) Implementing programs to minimize lost water, such as piping leaks.

(5) Use of metered water billing by public water supplies.

(6) Utilizing best commercially-available technology to optimize efficiency of water use.

(7) Implementing recycling and reuse practices.

(8) Developing alternative water sources which are not susceptible to shortages.

(9) Increasing rates charged for water or eliminating reduced rates for large users.

c. Emergency conservation provisions. Water conservation plans shall contain emergency conservation provisions in accordance with the following criteria.

(1) General. The consumptive nature of a water use, as described in subrule 52.9(2) and determined from information required in 52.9(3)"a," shall be reduced by at least 50 percent over similar periods of normal use. This criterion does not apply to irrigation use. If this requirement cannot be met, justification for nonattainment shall be provided which must include documentation that an activity involving water use is essential and demonstration of use of best commercially-available technology. The department may then grant variances on a case-by-case basis.

Measures which will be credited for emergency conservation include, but are not limited to, the following: Documented water savings resulting from routine water conservation measures; shutdown, postponement, or curtailment of

nonessential activities involving water use; switching to nonaffected sources for water supply; mitigation of consumptive uses by direct discharge of stored water or water from a nonaffected source to the affected water source; acquisition and retirement of existing consumptive uses from the affected water source (credit for retirement of existing consumptive uses will be given only for the amount authorized during periods when emergency conservation is required); and imposing surcharges on water use during periods of shortage.

(2) Public water supplies. At a minimum, emergency water conservation plans for public water supplies must include provisions for restricting outside, consumptive water use.

(3) Irrigation water use. Emergency water conservation plans for irrigation water uses shall limit irrigation water use to the equivalent of one inch per irrigated acre per week for general farm crops and specialty crops, unless the water conservation plan contains other mitigating provisions such as listed in subparagraph (1) above.

Water conservation plans shall also address irrigation scheduling. Irrigation scheduling should attempt to provide approximately equal water use on each day of an irrigation cycle. Irrigation scheduling may be done in cooperation with other nearby irrigators who utilize the same water source.

This rule is intended to implement Iowa Code sections 455B.262 and 455B.265.

ITEM 13. Renumber existing rule 52.10(455B) as rule 52.11(455B) and insert the following as rule 52.10(455B):

567--52.10(455B) Priority allocation restrictions.

52.10(1) General. After any event described in subrule 52.10(2) has occurred, the department will investigate and, if appropriate, may restrict water use according to the priority allocation plan as described in subrule 52.10(3). Prior to imposing the priority allocation plan, the department will normally require emergency conservation measures to be taken by existing permittees. The department will not normally require emergency conservation until a shortage of water is imminent and will not normally impose the priority allocation plan until an actual impairment of water usage exists.

The department will notify existing permittees of any emergency restriction or suspension of water use by written order pursuant to subrule 52.7(2). A permittee will be required to maintain daily records of water withdrawal and wastewater discharge, if any, while the emergency order is in effect. These records shall be available for inspection by the department to verify compliance with the order.

Suspension or restriction of water usage applicable to otherwise nonregulated water users shall be by emergency order of the director which the department shall cause to be published in local newspapers of general circulation and broadcast by local media. The emergency order shall state an effective date of the suspension or restriction and shall be immediately effective on that date unless stayed, modified or vacated at a hearing before the commission or by a court.

The department will lift the suspension or restriction of water usage, as deemed appropriate, when evidence of sustained, improved conditions is available.

The department will not impose a suspension of water or a further restriction, other than emergency conservation, on the uses of water provided in paragraphs 52.10(3)"g" through "i" or on uses of water pursuant to a contract with the state as provided in Iowa Code subsections 455B.263(5) and 455B.263(6) unless the governor has issued a proclamation, as described in paragraph 52.10(2)"b". Notwithstanding such proclamation, in the case of water use under a contract with the state pursuant to Iowa Code subsections

455B.263(5) and 455B.263(6) and in effect prior to March 5, 1985, restriction or suspension measures will be limited to emergency conservation.

52.10(2) Triggering events. The department may implement the priority allocation plan following the occurrence of any of the following:

a. Receipt of a petition by a governmental subdivision or 25 persons that the priority allocation plan be implemented due to a substantial local water shortage adversely affecting their water supply.

b. Issuance by the governor of a proclamation of a disaster emergency due to a drought or other event affecting water resources of the state.

c. Determination by the department in conjunction with the office of disaster services of a local crisis which affects availability of water.

d. Receipt of information from a state or federal natural resource, research or climatological agency indicating that a drought of local or state magnitude is imminent. As a general guideline, emergency conservation or priority allocation restrictions will not be imposed on withdrawals from a surface stream or adjacent alluvial aquifer when stream flow is above the seven-day, one-in-ten-year low-flow level.

52.10(3) Priority allocation plan. Notwithstanding a person's possession of a permit or the person's use of water being a nonregulated use, the department may suspend or restrict usage of water by category of use on a local or statewide basis in the following order:

a. Water conveyed across state boundaries.

b. Water used primarily for recreational or aesthetic purposes.

c. Uses of water for the irrigation of hay, corn, soybeans, oats, grain sorghum or wheat.

d. Uses of water for the irrigation of crops other than hay, corn, soybeans, oats, grain sorghum or wheat.

e. Uses of water for manufacturing or other industrial processes.

f. Uses of water for generation of electrical power for public consumption.

g. Uses of water for livestock production.

h. Uses of water for human consumption and sanitation supplied by rural water districts, municipal water systems, or other public water supplies.

i. Uses of water for human consumption and sanitation supplied by a private water supply.

This rule is intended to implement Iowa Code section 455B.266.

Date

Larry J. Wilson, Director

(EP50R.MIN/sc)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM

12

ACTION

Proposed rules for underground storage tanks are attached. It is requested that these rules be adopted on an emergency basis. The changes proposed are required by the Groundwater Protection Act that was recently enacted by the Iowa General Assembly. These amendments address the collection of annual tank management fees, filling tanks that are not registered, and requirements for small residential and farm tanks that previously were exempt from the rules.

Allan Stokes

**ENVIRONMENTAL PROTECTION COMMISSION [567]
Emergency Adopted and Implemented**

Pursuant to the 1987 Iowa Code supplement section 455B.471 and 455B.479, the Environmental Protection Commission emergency adopts amendments to 567--135(455B), "Underground Storage Tanks," Iowa Administrative Code. These amendments relate to fees for registering underground storage tanks with the state and annual management fees for tanks over eleven hundred gallons in size. The rule also establishes requirements for farm and residential tanks that previously were excluded from the rules. Emergency adoption and immediate implementation is necessary to protect the public health and environment and to meet legislative deadlines for the effectiveness of these rules.

For these reasons, the Environmental Protection Commission finds that, pursuant to Iowa Code section 17A.4(2) and 17A.5(2) that public notice and participation is impracticable and that the normal effective date of this rule should be waived and the rule be made effective upon filing on September 22, 1987.

The Environmental Protection Commission adopted this rule at a regular meeting on September 22, 1987.

This rule implements Iowa Code Chapter 455B.

ITEM 1. Amend 135.3 Notice Requirements as follows:

Modify 135.3(5) by deleting five dollars (\$5) and inserting ten dollars (\$10).

135.3(8) It is unlawful for a person to place a regulated substance in an underground storage tank that has not been registered in accordance with this rule, except that the deposit is allowed one time provided:

- a) The person reports the unregistered tank to the department.
- b) The person provides the owner or operator with a registration form and informs the owner or operator of the registration requirements.

Add "135.3(9) When a supplier or deliverer of a regulated substance reports an unregistered tank to the department, the owner or operator of that tank has fifteen days from the date that the department receives the notice to register the tank with the department. If registration is not received within the fifteen-day period, the registration fee will be twenty-five (\$25) dollars.

ITEM 2. Add 135.4 Farm and residential tanks.

135.4(1) The owner or operator of a farm or residential tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial purposes is subject to the requirements of this rule.

135.4(2) Tanks under this rule installed before July 1, 1987 must report the tank on a notification form by July 1, 1989, but are not required to pay a registration fee.

135.4(3) Tanks under this rule that were installed on or after July 1, 1987 must comply with all the underground storage tank regulations.

ITEM 3. Add 135.5 Registration tags and annual management fee.

135.5(1) Tanks of one thousand one hundred (1,100) gallons or less capacity that have registered with the department will be issued a permanent registration tag.

135.5(2) Tanks that are over one thousand one hundred (1,100) gallons must submit a tank management fee of fifteen dollars (\$15) per tank each year by January 15. The first fee is due on January 15, 1988. A one-year registration tag will then be issued for the period from April 1 to March 31.

135.5(3) The owner or operator shall affix the tag to the fill pipe of the underground storage tank where it will be readily visible.

135.5(4) A person who conveys or deposits a regulated substance shall inspect the underground storage tank to determine the existence or absence of the registration tag. If the tag is not affixed to the fill pipe, the person may not deposit the substance in the tank except as allowed in 135.3(8).

ITEM 4. Revise 135.11 to reflect the effective date as the date of the rule adoption for the new sections.

ITEM 5. Renumber existing sections 135.4 through 135.11.

Date

Larry J. Wilson, Director

(EP135E.MIN/mc)

Draft
8/28/87

Revise Chapter 135--Underground Storage Tanks by adding the following:

135.7(3) Testing or monitoring for vapors using a sniffer well may be used only if:

a. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

b. The stored regulated substance is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation area in the event of a release from the UST system;

c. The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture so that a release could go undetected for more than 30 days;

d. The level of background contamination in the excavation area will not interfere with detection of releases from the UST system and, when measured in the soil gas, is no greater than 500 ppm of total hydrocarbons;

e. The vapor monitors are designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system and are capable of detecting any significant increase in concentration of total hydrocarbons above background levels;

f. In the UST excavation area, the site is assessed to assure compliance with the requirements in paragraphs 135.7(3)(a) through (e) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation area from any portion of the UST system; and

(g) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(EP135X.RUL/sc)

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION COMMISSION

ITEM

17

DECISION

CONTRACT APPROVAL - VOGEL PAINT

Commission approval of the attached contract is requested. A consent order with Vogel Paint & Wax Co., Inc. calls for reimbursement to the department for certain of its costs in connection with the Vogel Paint site cleanup. Cleanup is proceeding as planned.

Mike Murphy
Government Liaison Bureau
September 10, 1987

87253DNR0005

VOGEL PAINT & WAX CO., INC.
AND
IOWA DEPARTMENT OF NATURAL RESOURCES
CONTRACT FOR REIMBURSED STATE COSTS

I. Authority

The Department pursuant to Iowa Code section 455B.384(1) is authorized to provide technical advice and assistance to Vogel Paint & Wax Company for the control, abatement and prevention of the hazardous condition which is determined to exist on property located in the NW 1/4 of Section 29, T94N, R45W, Sioux County, Iowa. Vogel Paint in accordance with Iowa Code section 455B.392 is liable to the state for the reasonable cleanup costs incurred by the state as a result of the clean up of hazardous substances on property described above.

II. Purpose

By this contract Vogel Paint is to pay for the reasonable response and oversight costs incurred by the Iowa Department of Natural Resources which activities are required to implement and enforce Consent Order No. 87-SW-16.

III. Parties

The contract is between Vogel Paint and the Iowa Department of Natural Resources.

IV. Project Activities and Costs

A. The Department agrees to conduct the following oversight and response activities and Vogel Paint agrees to reimburse the Department in accordance with the following estimated schedule:

| | |
|---|-----------------|
| Direct Oversight Cost (880 hours) x (\$20/hr) | \$17,600 |
| Indirect Cost (25%) | 4,400 |
| Travel Cost for Community Relations and Project Oversight subject to state maximum daily travel limitations | 270 |
| Sample Analysis (10 samples @ \$500/sample) | 5,000 |
| Public Notices (3 notices @ \$25/notice) | 75 |
| TOTAL | <u>\$27,345</u> |

B. The completion of work described in Consent Order No. 87-SW-16 shall be assessed on a quarterly basis. At the end of each quarter the Department shall determine the cost of the Department's activities during the quarter, if any, and shall notify Vogel. Payments to the Department for these activities shall be made within 30 days of receipt of the accounting.

- C. Payment shall be made to the "Department of Natural Resources - Hazardous Waste Remedial Fund" and shall be sent to:

Department of Natural Resources
Henry A. Wallace Building
900 East Grand Avenue
Des Moines, IA 50322

- D. Vogel Paint retains the right to dispute the propriety of the costs assessed by the Department. Within 30 days of receipt of the accounting by Vogel Paint, Vogel Paint shall notify the Department of its dispute which shall include an itemization of the project activities and associated costs and the reasons for the dispute of each item.

Within 15 days of receipt of the disputed costs, the Department shall confer with Vogel Paint in an attempt to achieve agreement. If an agreement can be achieved by such conference the Department shall submit a revised accounting to Vogel Paint and payment shall be made in accordance with paragraph III.B.

If agreement concerning the disputed costs can not be achieved the Director of the Department shall determine the appropriate remedy which the Department shall pursue. The Department and Vogel Paint shall be provided an opportunity, prior to the decision of the Director, to present oral or written arguments to the Director. Reasonable notice of the date and time of consideration by the Director shall be provided.

- E. None of the foregoing provisions shall prohibit any party from pursuing appropriate judicial or other remedies as provided by law on the disputed portions of an accounting.

IV. Period of Performance

This contract shall be effective upon the signatures by both parties. It will terminate upon fulfillment by both parties of all responsibilities outlined in this contract.

V. Amendments

Any change to this contract must be agreed to, in writing, by both parties.

LARRY WILSON, DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

Vogel Paint & Wax Co., Inc.

Date

Date

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 18

DECISION
INFORMATION

RULE DECISION--SUBRULE 567--41.4(3)"f"(5)

The Commission adopted rule amendments to Chapters 40 and 41 of the water supply rules concerning fluoride in August, 1987. Following this adoption an error was discovered in subrule 41.4(3)"f"(5), which incorrectly referred to subrule 41.4(1). The subrule should have referred to subrule 41.4(11). This emergency adopted and implemented rule corrects this reference and will become effective on October 14, 1987, the same date as the rule amendments adopted in August, 1987.

Allan Stokes
August 11, 1987

(E:41 MIN)

ENVIRONMENTAL PROTECTION COMMISSION [567]

**Emergency Adopted
and Implemented Rule**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission of the Department of Natural Resources emergency adopts and implements subrule 41.4(3)"f"(5) of 567--Chapter 41 Iowa Administrative Code, pertaining to analysis for fluoride in community drinking water systems.

In compliance with Section 17A.4(2) Code of Iowa the Commission finds that public notice and public participation would be contrary to public interest since the proposed amendment to subrule 41.4(3)"f"(5) corrects an erroneous reference in the subrule to another subrule. It is in the public interest to have the correct subrule reference to inform the public that fluoride analysis must be conducted by a certified laboratory as prescribed in 41.4(11).

The Commission finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rule, 35 days after publication, should be waived and the rule be made effective October 14, 1987, the same effective date as for previous amendments to rules in Chapters 40 and 41 pertaining to analysis for fluoride in community public water supplies. . . confers a benefit upon the public to have this subrule effective on the same date as the previously adopted subrules pertaining to fluoride analysis in community drinking water systems.

The Commission adopted this subrule on September 22, 1987.

This subrule is intended to implement Iowa Code Chapter 455B, division III, part I. The subrule will be effective on October 14, 1987.

ITEM 1. Amend subrule 41.4(3)"f"(5) as follows:

(5) Effective October 2, 1987, analysis for fluoride under this subrule shall only be used for determining compliance if conducted by a certified laboratory as prescribed in 41.4(11) that has analyzed Performance Evaluation samples to within $\pm 10\%$ of the reference value at fluoride concentrations from 1.0 mg/l to 10.0 mg/l within the last 12 months.

September 22, 1987

Date

Larry J. Wilson, Director

(E:EP41.MIN)

ENVIRONMENTAL PROTECTION COMMISSION

ITEM 19

INFORMATION

PROPOSED CONTESTED CASE DECISION--CITY OF LONG GROVE

The City of Long Grove, Iowa, submitted a plan of action under the Municipal Improvement Program to the Department for its wastewater treatment facility. The plan requested that the proposed aerated lagoon system be operated in a fill and draw mode of operation rather than in the continuous discharge mode of operation which is the normal mode of operation for this type of lagoon system. The request for use of the fill and draw mode of operation was considered by the Department to be a request for a variance by the City and was denied by the Department.

An appeal was filed on behalf of the City and a contested case hearing was held on July 15, 1987. Following the submission of briefs by the parties, the Hearing Officer issued the attached proposed decision on September 9, 1987. The decision affirmed the Department's denial of the City's variance request to use the fill and draw mode of operation for its upgraded aerated lagoon system.

An appeal may be filed by the City pursuant to department rules. In the absence of an appeal, the Commission may decide on its own motion to review the proposed decision. If there is no appeal by the City or review of the proposed decision by the Commission on its own motion, the decision automatically becomes the final decision of the Commission.

Diana Hansen
August 11, 1987

(E:LG.MIN)

BEFORE THE IOWA DEPARTMENT OF NATURAL RESOURCES

**IN THE MATTER OF:
CITY OF LONG GROVE**

**PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF
LAW AND ORDER
DIA NO. 870135**

The City of Long Grove, Iowa submitted a Plan of Action for its municipal sewage treatment facility to the Department of Water, Air and Waste Management (predecessor agency to the Department of Natural Resources, hereinafter, the department) in summer, 1985. The plan requested that the City of Long Grove be allowed to operate its aerated lagoon in a fill and draw mode of operation. The plan was not approved, and after discussion with the Department the City of Long Grove appealed on March 19, 1987. A Notice of Hearing set the hearing for July 15, 1987. The City of Long Grove filed its Petition on June 25, 1987. The Department filed its Answer on July 15, 1987.

The hearing was held on July 25, 1987 in the fifth floor conference room, Wallace State Office Building, 900 E. Grand, Des Moines, Iowa 50319. Representing the parties were Diana Hansen, counsel for the Department, and Thomas F. Allen, P.E., for the City of Long Grove. The undersigned hearing officer presided.

THE RECORD

The evidentiary record in this case consists of the recorded testimony of the witnesses, the above pleadings, the briefs of the parties and the following Exhibits:

- | | | |
|--------------------|---|--|
| Petitioner Exhibit | 1 | Plan of Action for City of Long Grove dated May, 1985. |
| | 2 | Letter dated 6/19/85 from Ralph Turkle to Thomas Allen. |
| | 3 | Addendum No. 1 to Plan of Action dated June, 1987. |
| | 4 | Preliminary Engineering Drawings for City of Long Grove's Wastewater Treatment System Improvement. |
| Department Exhibit | A | Letter dated 8/1/86 from Allen Stokes to Thomas Allen. |
| | B | Letter dated 4/24/87 from Stokes to Allen. |

- C Request for Variance form for Long Grove Wastewater Treatment Plant.
- D Information from Department's Field Office 6 on effluent testing results for Long Grove's Wastewater Treatment Plant for 1986 and first six months of 1987.
- E Letter dated 12/10/86 from LaVoy Haage to Thomas Allen.
- F Current N.P.D.E.S. permit for City of Long Grove.

FINDINGS OF FACT

1. The City of Long Grove's present Wastewater Treatment Plant consists of a single, non aerated lagoon with dimensions of 558 feet by 220 feet. The water flows into the cell and is stored for a period of time. The cell is drawn down (water discharged) on a periodic basis, monthly or bi-monthly. The water is tested prior to the discharge. The N.P.D.E.S. permit for the facility indicates that the current one cell waste stabilization lagoon system is to be operated as a controlled discharge facility using a storage drawdown method of operation. The draw down is to occur twice per year in the spring and fall. (Testimony of Thomas Allen; Exhibit F).
2. The quality of the effluent being discharged from Long Grove's Wastewater Treatment Facility does not meet current effluent limits. (Testimony of Thomas Allen, Daryl McAllister, Department Exhibit D).
3. The Department has set up the Municipal Improvement System which is designed to bring municipal facilities into compliance with the requirements of the Federal Water Pollution Control Act, 33 U.S.C.A § 1311, by July 1, 1988. Municipalities which are not in compliance are notified and required to submit a Plan of Action within six months. The Plan of Action must detail the type of improvements proposed, a schedule, and the estimated costs. The Department must determine whether the Plan of Action is approvable. (Testimony of Thomas Allen).

4. The City of Long Grove submitted its Plan of Action to the Department in summer, 1985. The plan was deemed not approvable by the Department but negotiations, meetings, and correspondence between Long Grove and the Department continued. Long Grove appealed the non approval of its Plan of Action, which was essentially a variance denial, on March 19, 1987. (Testimony of Thomas Allen, Daryl McAllister).
5. In June, 1987 the City of Long Grove submitted an addendum to its Plan of Action which renders the Plan of Action approvable. In submitting the plan, however, Long Grove specifically reserved its right to continue with its pending appeal. It was clear at the hearing that on appeal Long Grove is seeking approval of their Plan of Action, as originally submitted, i.e. using the fill and draw mode of operation and without using a baffle wall to create the quiescent zone. (Petitioner's Exhibit 3, Testimony of Thomas Allen, Daryl McAllister).
6. Pursuant to statutory authority, the Department has adopted the Iowa Wastewater Facilities Design Standards (hereinafter Design Standards). Chapter 18C of those standards apply to Wastewater Treatment Ponds (Lagoons). Two design types are described in the Standards: Controlled Discharge Pond Design and Aerated Facultative Pond Design. (Iowa Wastewater Facilities Design Standards, Adopted April 25, 1979, Amended May 20, 1986 and May 20, 1987).
7. The City of Long Grove's original Plan of Action proposed the following improvements to its current treatment system:
a) installation of a new aerated lagoon to pre-treat the wastewater prior to the existing lagoon, b) addition of 5 h.p. aerator to the existing lagoon, c) improvement of the piping and valve system at the discharge of the existing lagoon, and d) changing the operation of the treatment system to a modified "fill and draw-down" system. (Testimony of Thomas Allen, Petitioner's Exhibit I).
8. A "fill and draw down system" discharges water when the lagoon is full or near full. The lagoon is then lowered three to four feet, the valves are shut, and the water is allowed to build up again. Thomas Allen, P.E., the design consulting engineer for the City of Long Grove, is not sure how often it will be necessary to draw down the lagoon under this system, although he estimates the frequency at every three to four months. (Testimony of Thomas Allen).
9. The Department refuses to approve the "fill and draw down" method of operation because it does not conform to the Design Standards and because there is no evidence that the city of Long Grove will be able to meet its effluent limits using this method of operation. The Department wants the City of

Long Grove to use a continuous flow through mode of operation. (Testimony of Daryl McAllister, LaVoy Heage).

10. The proposed effluent structure in Long Grove's original plan of action will have valves on each of two draw off pipes, one of which is located two feet below high water level, and one of which is located four feet below high water level. The city will be able to convert from a fill and draw method of operation to a continuous flow through method by leaving the two valves closed. Long Grove requests the opportunity to try the fill and draw method of operation for approximately a year, with the understanding that they would voluntarily convert to a continuous flow through mode if they are not meeting effluent limits. Long Grove concedes that they cannot show they will meet effluent limits with the fill and draw mode of operation. They could cite to no similar system currently in operation, and they had no test data. (Testimony of Thomas Allen).
11. In a continuous flow through mode of operation both cells of the lagoon are full at all times so that when water flows in, an equal amount of water also flows out. (Testimony of Thomas Allen).
12. The Design Standards for a normal aerated lagoon system (aerated facultative pond design) require two or more aerated cells and one quiescent cell with a two day retention time. The first two cells shall be of equal size and no one cell shall provide more than 50% of the total required volume. The quiescent cell theoretically helps solids settle out just prior to discharge. The quiescent cell may be formed by baffling off an area in the final aerated cell, but all other cells must be separated by earthen dikes. Baffling off an area is accomplished by installing a floating baffle wall, which has holes in it to allow the water to flow from one section to another. The Design Standards for an aerated facultative pond design require a continuous flow through mode of operation. (Testimony of Thomas Allen, Daryl McAllister, Iowa Wastewater Facilities Design Standards 18C.1.4, 18C.6, 18C.6.1.2, 18C.7.1.1).
13. The Design Standards for a Controlled Discharge Pond Design require three lagoons and 180 day detention of wastewater. Discharges are allowed only twice per year during high stream flows in spring and fall. More frequent discharges could be potentially dangerous to the receiving stream if water is not stored long enough to be properly treated or if there is low stream flow. Controlled Discharge and "fill and draw" are the same mode of operation, although Long Grove's proposed "fill and draw" would have more frequent draw downs than twice per year. (Testimony of Daryl McAllister, Iowa Wastewater Facilities Design Standards, Department Exhibit A).

14. The City of Long Grove does not want to install a floating baffle wall in its large lagoon. Long Grove feels that a floating baffle is unnecessary because the lagoon is so large that a quiet area, unaffected by the 5 h.p. aerator, will naturally occur. A baffle would help prevent short circuiting within the wastewater treatment system. Short circuiting is when wastewater flows out of the first cell and moves directly to discharge without being mixed and treated in the second cell. (Testimony of Thomas Allen, Daryl McAllister, Exhibit 3).
15. Long Grove's Plan of Action, as originally presented is a hybrid aerated lagoon. It does not meet the Design Standards for a Controlled Discharge Pond Design or for an Aerated Facultative Pond Design, but has elements of each. (Testimony of Thomas Allen, Daryl McAllister).
16. Long Grove points out that even their Revised Plan of Action, which the Department has indicated is approvable, does not strictly adhere to the Design Standards for Aerated Facultative Pond Design. Specifically, the Design Standards call for the first two cells to be of equal size. In Long Grove's Plan the first cell is much smaller than the second cell. The Department would grant Long Grove a variance on the requirement of equally sized cells. (Testimony of Thomas Allen, Daryl McAllister).
17. Thomas Allen, P.E. testified that he perceives his proposed design for the Long Grove Wastewater Treatment Facility to be based on McKinney's approach to an aerated lagoon system. McKinney is a professor of Wastewater Engineering at the University of Kansas. Dr. Richard Dage, an engineering professor at the University of Iowa, had advocated the McKinney approach for years and has tried, unsuccessfully, to get the Commission to incorporate McKinney's approach into the Design Standards. McKinney's design concept is basically a modified aerated lagoon where an initial, smaller cell with a 1 1/2 to 2 1/2 day detention time is followed by a large quiescent cell where additional treatment is done and solids settle out. However, the McKinney approach is a continuous flow through aerated lagoon. (Testimony of Thomas Allen).
18. During wet periods the flow to the lagoon would considerably exceed the design flow given in the plan of action. With the greater flow, the actual storage time above the two-foot level would be much less than initially projected, drawdown would be more frequent than initially estimated and there would be more chance for short circuiting. (Testimony of Daryl McAllister).

19. The Commission specifically examined the quiescent zone when it was considering modifications to the Design Standards and refused to waive the requirement. However, the Commission did modify the Design Standards to allow the quiescent zone to be created by the floating baffle wall, instead of by earthen dikes. Since this was specifically examined and rejected by the Commission, the Department feels it lacks authority to grant a variance for the quiescent cell requirements.

CONCLUSIONS OF LAW

1. Iowa Code 455B.173(3) provides that "The Commission shall establish, modify or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and specifying the conditions under which the director shall issue, revoke, suspend, modify or deny permits for the operation, installation, construction, addition to or modification of any disposal system. . ."
2. Iowa Code 455B.173(8) provides in relevant part that the Commission shall formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and specifications and the construction of sewer systems. . .not later than October 1977. The standards shall be based on criteria contained in the "Recommended Standards for Sewage Works" and "Recommended Standards for Water Works" (Ten States Standards) as adopted by the Great Lakes-Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. . ."
3. Iowa Code 455B.174(4) provides in relevant part that "The director shall approve or disapprove the plans and specifications for the construction of disposal systems. . . The director shall issue, revoke, suspend, modify or deny permits for the operation, installation, construction, addition to or modification of any disposal system. . ."
4. 567 Iowa Administrative Code 64.2(1) provides that "no person shall construct, install or modify any wastewater disposal system or part thereof or extension or addition thereto without, or contrary to any condition of, a construction permit issued by the director. . ."
5. 567 Iowa Administrative Code 64.2(9)(a) provides that "review of applications for construction permits shall be based on the criteria contained in the "Iowa Wastewater Facilities

Design Standards", The Ten State Standards, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. To the extent of any conflict between the above criteria the "Iowa Wastewater Facilities Design Standards" standards shall prevail."

6. 567 Iowa Administrative Code 64.2(9)(b) describes the chapters of the "Iowa Wastewater Facilities Design Standards" that apply to wastewater facilities projects. Chapter 18 of the Design Standards relates to Biological treatment and subsection C of chapter 18 pertains to Wastewater treatment ponds (lagoons) Chapter 18C was adopted April 25, 1979 and amended May 20, 1986 and May 20, 1987.

7. 567 Iowa Administrative Code 64.2(9)(c) provides that variances from the design standards and siting criteria which provide in the judgement of the department for substantially equivalent or improved effectiveness may be requested when there are unique circumstances not found in most projects. The director may issue variances where circumstances are appropriate. The denial of a variance may be appealed to the commission.

64.2(9)(d). When reviewing the variance request the director may consider the unique circumstances of the project, direct or indirect environmental impacts, the durability and reliability of the alternative, and the purpose and intent of the rule or standard in question.

64.2(9)(e). Circumstances that would warrant consideration of a variance (which provides for substantially equivalent or improved effectiveness) may include the following:

- (1) The utilization of new equipment or new process technology that is not explicitly covered by the current design standards.
 - (2) The application of established and acceptable technologies in an innovative manner not covered by current standards.
 - (3) It is reasonably clear that the conditions and circumstances which were considered in the adoption of the rule or standard are not applicable for the project in question and therefore the effective purpose of the rule will not be compromised if a variance is granted.
8. No evidence was presented to establish that Long Grove's original Plan of Action would create a treatment system that would provide "substantially equivalent" or "improved effectiveness". Long Grove conceded that it had no data or

projections on whether the proposed plan could meet effluent standards. The Department rules only authorize a variance where the proposal will provide for substantially equivalent or improved effectiveness. Long Grove, as the proponent for the variance, had the burden to establish that its proposal provided for substantially equivalent or improved effectiveness. It did not meet this burden.
(567 Iowa Administrative Code 64.2(9)(c), 64.2(9)(e). Findings of Fact 3, 7-19).

9. It would be improper to grant a variance allowing Long Grove to create a quiescent zone without using a floating baffle to separate the zone from the rest of the treatment cell. The Commission has recently amended the Design Standards to allow that the quiescent cell or zone may be formed by baffling off an area in the final aerated cell. Prior to this change, the quiescent cell was required to be separated by earthen dikes. Long Grove presented no evidence or data to establish that they would achieve substantially equivalent or improved effectiveness without a baffle wall. The Department presented substantial evidence which established that there would be less effective treatment without a baffle wall. Furthermore, it is not reasonably clear that the conditions and circumstances which were considered in the adoption of this rule are not applicable to the project in question, and therefore it is likely that the effective purpose of the rule would be compromised if a variance is granted.
(Findings of Fact 12, 14, 18, 19, 567 Iowa Administrative Code 64.2(9)(c); Iowa Wastewater Facilities Design Standards, Chapter 18C).

ORDER

It is therefore ORDERED that the denial by the Department of the City of Long Grove's variance request is affirmed.

DATED THIS 9th DAY OF September, 1987.

Margaret LaMarche
Margaret LaMarche, Hearing Officer
Iowa Department of
Inspections and Appeals

cc: Thomas F. Allen, P.E., President
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